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FEDERAL GOVERNMENT'S RELATIONSHIP WITH AMERICAN INDIANS

HEARINGS

BEFORE THE

SPECIAL COMMITTEE ON INVESTIGATIONS

OF THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

NATURAL RESOURCES ON INDIAN LANDS

MAY 12, 1989

WASHINGTON, DC

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NATURAL RESOURCES ON INDIAN LANDS

FRIDAY, MAY 12, 1989

U.S. SENATE,
SPECIAL COMMITTEE ON INVESTIGATIONS,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:37 a.m., Hon. Dennis DeConcini (chairman of the special committee) presiding.

Present: Senators DeConcini and McCain.

STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA, CHAIRMAN, SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator DECONCINI. The Special Committee on Investigations will come to order.

This morning we're going to hear from a number of representatives of Native American groups and their attorneys to outline the problems with allottees and royalties as they relate to the individuals in the process.

The first panel will be composed of Steve Moore, attorney, Native American Rights Fund, from Colorado; Mary Limpy, owner of allotted land, member of the Cheyenne-Arapaho Tribe in Oklahoma; and Houston and Velma Decker, owners of allotted land from the Caddo Tribe in Oklahoma.

Would you all come forward, please, and raise your right hands?

[Witnesses sworn.]

Please be seated.

Thank you for joining us this morning.

Ms. Soller will conduct the inquiry. Please proceed.

STATEMENT OF STEVE MOORE, ATTORNEY, NATIVE AMERICAN RIGHTS FUND, BOULDER, CO; MARY LIMPY, OWNER OF ALLOTTED LAND AND MEMBER, CHEYENNE-ARAPAHO TRIBE, OKLAHOMA; AND HOUSTON AND VELMA DECKER, OWNERS OF ALLOTTED LAND AND MEMBERS, CADDO TRIBE, OKLAHOMA

Ms. SOLLER. Mr. Moore, I would like to start with you. Where are you currently employed?

Mr. MOORE. Good morning, Ms. Soller.

I'm a staff attorney currently with the Native American Rights Fund in Boulder, CO.

Ms. SOLLER. What is your connection with the allottees in Oklahoma?

Mr. MOORE. About 4 years ago we were approached, the Native American Rights Fund was approached, by attorneys from Oklahoma Indian Legal Services in Oklahoma City and asked to co-counsel in a lawsuit—"OILS", as it is known—filed against the United States Government on behalf of allottees in the Anadarko area of the Bureau of Indian Affairs in Oklahoma to enforce provisions of the Federal Oil and Gas Royalty Management Act.

Ms. SOLLER. Specifically, what were your complaints against the way that FOGRMA, as it's called, was being enforced?

Mr. MOORE. At that time the allottees in Anadarko were having serious problems because they simply were not receiving checks for royalties. No checks were coming in the mail. That was back in the early days of implementation of the royalty management program under FOGRMA by the Minerals Management Service.

Their checks were up to 3, 4, 5 months late at that time. They also were receiving no explanation of payments, so they didn't know why their checks were late, when they would receive a check. They didn't know what the check represented. The system was in complete chaos at that time. Everything was being done manually.

They needed immediate relief. They approached OILS concerning the need to file a lawsuit.

Ms. SOLLER. Were there allegations that the Government was violating its trust responsibility in that case?

Mr. MOORE. Yes; one of the causes of action in the case—and the lawsuit is styled *David Kauley versus the United States,* and there are express violations of the trust responsibility alleged in that lawsuit.

Ms. SOLLER. Specifically, what is your idea of what the Government's trust responsibility is when it comes to allottees?

Mr. MOORE. Well, you can examine the trust responsibility on a number of levels. One of the immediate concerns that we had with the situation involving the implementation of FOGRMA was that there was no one on the Government side who was looking after the legal interests and legal rights of the allottees.

There has never been a lawyer within the Federal system who has joined in the lawsuit on behalf of the allottees to enforce the trust responsibility or to enforce the express provisions of FOGRMA.

As Mr. Taradash referred to yesterday, we have been battling against an array of lawyers within the Justice Department and within the Solicitor's Office of the Interior Department who have come to the aid of the Minerals Management Service in their defense.

The statute FOGRMA, as the Senator heard yesterday, very poorly defines the trust responsibility. In the findings of Congress, it's expressed that the Government has a trust responsibility to Indians, and in the policy statement in FOGRMA it says that the Secretary shall aggressively carry out his trust responsibilities to Indians, and that's it. There's really no careful articulation of what that means in the context of Indian oil and gas royalty management. I think therein lies the problem.

The Supreme Court over the years has had occasion to deal with the trust responsibility. In 1983, in the case *United States versus Mitchell,* the Supreme Court said that the United States has full

responsibility to manage natural resources for the benefit of Indians. In that case, they were looking at a number of timber resource management statutes and regulations.

The problem in the context of oil and gas royalty management is that there is no careful articulation of what that trust responsibility means. So that while courts have said that there is a trust responsibility and it is enforceable, either in a court of equity or a court of law, for money damages where it's violated, it's difficult to prove a violation of the trust responsibility when Congress has not told the Executive Branch more precisely what those responsibilities are.

Ms. SOLLER. What year did you file your litigation?

Mr. MOORE. *Kauley* was filed in December of 1984.

Ms. SOLLER. And have you had a resolution as to what the trust responsibility was in that case yet?

Mr. MOORE. No; we're currently engaged in settlement negotiations with the Government on a number of issues. One of the frustrations is that in the Western District of Oklahoma in the U.S. District Court we have a judge who has been sitting on motions for summary judgment on a number of important issues for 3 years now. We filed motions for summary judgment in June 1986. It was argued in February 1987, and we still don't have a decision on the merits of those issues yet. That's one of the frustrations of the suit.

Ms. SOLLER. In depositions that we have taken from the Minerals Management Service, some of them have defined the trust responsibility in terms of how much they need to spend to recover a dollar. In other words, should they spend a dollar of Federal money to recover a dollar of Indian money?

What do you think about an analysis of the trust responsibility in those terms?

Mr. MOORE. Well, I think that the Minerals Management Services would choose to define the trust responsibility on their terms, and that's another problem with FOGRMA. When you have a statute that vaguely defines the trust responsibility, then the agency is able to kind of create its own interpretation of what its trust responsibility is.

In the context of the cost-benefit analysis issue, the Minerals Management Service would choose to say, "Well, we've already spent $100-plus million on creating and implementing this system. Therefore, if we spend another dollar, you have to analyze it in terms of $100 million plus $1 to return $1 to the Indian." I think that's a totally false way of looking at the cost-benefit analysis.

As other witnesses will testify today, States and tribes have set up systems to catch the problems that fall through the Federal system's cracks and set those systems up on a very cost-effective basis. They do a better job of watching royalty management than the Federal system.

I think you have to look to State systems and to tribal systems in terms of what the cost-benefit analysis is.

Ms. SOLLER. What do you think should be done to better define the trust responsibility in FOGRMA?

Mr. MOORE. Well, I'd like to use an analogy to a law that was passed last year by Congress that the Senate Indian Affairs Com-

mittee was very involved in, the Health Care Improvement Act for Indians.

There's a provision of the Indian Health Care Improvement Act that relates expressly to the trust responsibility of the Indian Health Service in the areas of solid waste management on Indian reservations, which is a major problem. That provision of the Indian Health Care Improvement Act says a number of things about what the Indian Health Service shall do to take care of solid waste management problems on Indian reservations.

If you use that as an analogy, there could be more express language built into FOGRMA in terms of what the trust responsibility means for individual Indian allottees. The way the current system is designed, it takes a global perspective. The current system places a high priority on tracking royalties on offshore production.

I think the second priority for the system is on Federal lands onshore. A third priority would probably be leases to tribes.

Indian allottee leases fall at the bottom of the priority list for the Minerals Management Service. As Senator DeConcini articulated very well yesterday, Congress' intent in the trust responsibility means that agencies elevate the priority, and in this case I think there could be express language and we would be happy to work with this Investigative Committee in developing express language in terms of elevating the trust responsibility for Indian allottees.

Indian allottees, as it was mentioned yesterday, are in a real bind because, unlike States and unlike tribes, at this point they don't have the sovereign powers; they don't have the institutional ability; they don't have the financial ability to set up their own counterpart systems to catch the mistakes that fall through the Federal system. Allottees are entirely dependent upon the Minerals Management System, and it just doesn't work for them.

Ms. SOLLER. Do you have specific examples of ways in which the trust responsibility is not currently now being satisfied or met in Anadarko?

Mr. MOORE. Yes, I do. The system in Anadarko is beset with problems, and there will be two consultants that we've hired in the litigation, Ben Binder and Jeff Southwick, who will testify later this morning, who I think will paint a much clearer and express picture of the problems.

But the general problems were generally stated by Randy Fetterolf and Chuck Norman yesterday, but they include problems with the explanation of payment reports, and there's an example of an EOP up here that Jeff Southwick will walk the committee through.

The EOP currently doesn't accompany the check, and that's a requirement of FOGRMA, that together with payment the Indian allottees receive an explanation for that payment.

Ms. SOLLER. That's right in the statute, isn't it?

Mr. MOORE. That's express language in the statute; correct.

Ms. SOLLER. Are they doing that now?

Mr. MOORE. No, they're not doing it now. They've never done it.

The technology exists. It's being done in the private industry. In Oklahoma, for example, there are State statutes that require EOPs. They're not called "EOPs," but the statute requires an explanation of payment with payment to non-Indian private fee landowners who have interests in oil and gas wells.

The statute basically parrots the Federal FOGRMA provisions in terms of the requirements of that payment report. So the technology exists to produce a report with payn.ent. The private industry in Oklahoma and in other States is doing it very easily and very capably, and they do it on a cost-effective basis. This is, after all, private industry where their profit is in the margin, and they can produce it.

The bottom line on the EOP, the amount of money that it states the allottee is entitled to after all adjustments and allowances and everything else, doesn't match the check. That creates confusion on the part of allottees. When they get a report a month after they get a check and the two are not in sync, their only recourse is to call the BIA or to call MMS and then they're sent into this vicious cycle of finger pointing on the part of the agencies.

Allottees have a difficult time understanding the complexity of the reports. Jeff Southwick will again walk the committee through the complexities of an EOP later.

There are derived royalty rates. The EOPs roll up the adjustments. They roll up the deductions and allowances, so they're not all explained line by line. The BIA personnel in the agency offices, although they've been through training, by and large are not capable of explaining the EOPs. They don't understand the EOPs. They don't have the computer equipment on line to be able to go back into the EOPs, unroll the data to explain what's actually going on.

The EOPs, as Jeff again will take you through later this morning, manifest other serious technical problems within the system. That's just the EOPs.

Ms. SOLLER. You talk about the employees at BIA not being able to explain this. What is the accountability like within the system to explain to an allottee who has a problem or a question about their accounts, whether it's in BIA or MMS or BLM?

Mr. MOORE. Well, I liken it—and I'm not trying to make a humorous situation out of one that's very serious, but I liken it to the commercials a few years ago, "I don't want to try it. Let Mikey try it," the cereal commercials. You get that situation.

If the staff at the BIA office can't explain a problem on an EOP, then the allottee is given a number to call in Lakewood, Colorado at Minerals Management Service, and other witnesses will describe that problem. The Deckers will describe a personal problem that they've had with that runaround.

There simply is not accountability.

Ms. SOLLER. Let me turn to you right now, if I could, Mr. and Mrs. Decker.

Mr. Decker, you are an owner of restricted land; isn't that right?

Mr. DECKER. Yes.

Ms. SOLLER. And you inherited that land from an original allottee of the land in Oklahoma, didn't you?

Mr. DECKER. Yes.

Ms. SOLLER. Where is your land?

Mr. DECKER. Pryor, Oklahoma.

Ms. SOLLER. You're retired now; is that right?

Mr. DECKER. Ma'am?

Ms. SOLLER. You're retired?

Mr. DECKER. Yes.

Ms. SOLLER. And the money that you get from your accounts of this restricted land, is that money that you use to live on or is it extra money to you?

Mr. DECKER. Live on.

Ms. SOLLER. Now did there come a time in which you tried to find out what was going on in your accounts?

Mr. DECKER. Yes.

Ms. SOLLER. Why couldn't you just read the explanation that the Government sent you to understand what was happening?

Mr. DECKER. Very complicated.

Ms. SOLLER. Could you understand it?

Mr. DECKER. No.

Ms. SOLLER. Mrs. Decker, could you understand that form?

Mrs. DECKER. Well, it has taken me a long time to get to the point where I'm at now. At first it was just like a bunch of jumble, but the more I looked at them, the more I understood it.

Ms. SOLLER. But can you understand now?

Mrs. DECKER. More than I did three months ago. Of course, Jeff has helped on some of that to explain some of it.

Ms. SOLLER. That's Jeff Southwick; is that right?

Mrs. DECKER. Yes. Such as the royalty rate, how to figure the owner's share. What I run into was—first began to question was all these minuses, and then March the 23rd of 1988—on March the 28th he received a check for $199.

Ms. SOLLER. Was that an abnormal check?

Mrs. DECKER. The what?

Ms. SOLLER. Was that a check that was unusual?

Mrs. DECKER. Yes, because it dropped suddenly. So he asked me to write a letter to the BIA at Anadarko to ask why it dropped so suddenly. Of course, we had other questions that had been rolling around about the minuses and how to figure the royalty rights. I have a letter that we wrote.

Ms. SOLLER. That's the letter dated March 23rd.

Mrs. DECKER. Dated March the 23rd of 1988 to the Oil and Gas Lease Department, Anadarko Area Office.

Ms. SOLLER. And did you mail that letter to them?

Mrs. DECKER. Yes.

Ms. SOLLER. Did you get a response from them?

Mrs. DECKER. No, no answer. The only thing that was near an answer, on March the 30th a check came that was dated March the 28th for a little over $2,000. No answer from the letter. The check was the only answer.

Ms. SOLLER. Now you live in Pryor, Oklahoma; is that right?

Mrs. DECKER. Pryor, Oklahoma.

Ms. SOLLER. How many miles is that away from the office in Anadarko?

Mrs. DECKER. Somewhere probably 250, more or less.

Ms. SOLLER. Did you go down to Anadarko at some point to find out what was happening?

Mrs. DECKER. We finally went down on October the 28th, 1988. But at one point, we had called down about something and Max Standing was to return the call. He never did.

Ms. SOLLER. Max Standing is the realty officer at Anadarko; right?

Mrs. DECKER. I'm not hearing you.

Ms. SOLLER. I'm sorry. Max Standing is the realty officer in Anadarko?

Mrs. DECKER. Yes.

Ms. SOLLER. He told you that he would call back and he never did?

Mrs. DECKER. No; so on October 28 we made a trip down there. We went to Dave Kills' office to ask why we didn't get a response from the March 23rd letter.

Ms. SOLLER. Now Dave Kills is the oil and gas realty officer at Anadarko; is that right?

Mrs. DECKER. We had some other questions to ask him. He said he didn't get the letter. I asked him if that was his post office box number, his department number. He said yes, and I said, "You should have received it because it didn't come back."

Ms. SOLLER. Since you were there and you had the letter with you, did you ask him the questions directly?

Mrs. DECKER. We asked—and we took our son, Joe Decker, with us, and all three of us was in the office. He called Max Standing in the office because he couldn't give us any answers. Max Standing didn't have any answers. He said Minerals Management had the answers in Colorado.

Ms. SOLLER. So let me see if I've got this right. You talked to both the oil and gas realty officer and the chief realty officer, and both of them said they couldn't answer the questions you had about your explanation of payments forms; is that right?

Mr. DECKER. Yes.

Ms. SOLLER. Okay. And they told you to get in touch with Minerals Management Service; is that right?

Mr. DECKER. Yes.

Ms. SOLLER. Did they give you the address?

Mr. DECKER. No.

Ms. SOLLER. Did they give you the phone number?

Mr. DECKER. No.

Ms. SOLLER. How did you get in touch with them?

Mr. DECKER. Through Jeff.

Ms. SOLLER. Through Mr. Southwick?

Mr. DECKER. Mr. Southwick.

Ms. SOLLER. Is he a Government officer or is he somebody that works with the private sector?

Mr. DECKER. Yes.

Ms. SOLLER. Yes? He doesn't work for the BIA?

Mr. DECKER. No, no.

Ms. SOLLER. Did you get in touch with Minerals Management Service?

Mrs. DECKER. Yes.

Mr. DECKER. Yes.

Ms. SOLLER. How?

Mr. DECKER. We sent them a registered letter.

Ms. SOLLER. When was that?

Mrs. DECKER. When they told us we'd have to contact Minerals Management—we wrote to—after we got home from the October trip to Anadarko, we discovered we didn't have an address of Minerals Management. So I contacted Jeff Southwick to get an address.

We sent the letter December the 10th to Minerals Management, and I have a copy of that letter.

Mr. DECKER. What was the question now?

Ms. SOLLER. When the letter was written and she mentioned it was December 10.

Mr. DECKER. Okay.

Mrs. DECKER. December 10 it was mailed. December 20 they dated a letter and sent a copy of the letter to him which was addressed to the superintendent of the BIA at Anadarko reminding them of the procedure of how to go about finding the answers, and I have that copy.

Ms. SOLLER. We have copies of those letters and would like to make them part of the record, if that would be all right with you.

[Letters appears in appendix:]

Ms. SOLLER. Now the letter from December 20th told BIA that they should answer these questions. You got a copy of it; right?

Mr. DECKER. Yes.

Ms. SOLLER. Did you hear anything from the Bureau of Indian Affairs after that?

Mrs. DECKER. We never heard from them concerning this letter.

Mr. DECKER. Until this day.

Ms. SOLLER. You do know, though, that somebody from this committee went down to Anadarko and looked in your lease file; isn't that right?

Mr. DECKER. Yes.

Ms. SOLLER. And that letter from Minerals Management Service is in your lease file; isn't that right?

Mr. DECKER. That's right.

Ms. SOLLER. And when that was brought to the attention of the realty office at Anadarko, they said they didn't know it was in the file; isn't that right?

Mr. DECKER. That's right.

Ms. SOLLER. And that they would do something about it right away and get in touch with you; isn't that right?

Mr. DECKER. That's right.

Ms. SOLLER. And that was April 19th?

Mr. DECKER. Right.

Ms. SOLLER. Have you heard anything from the Bureau of Indian Affairs since April 19th when this letter was personally brought to their attention?

Mr. DECKER. No, ma'am.

Mrs. DECKER. No.

Ms. SOLLER. And the person who was contacted there was Max Standing; isn't that right?

Mr. DECKER. Yes.

Ms. SOLLER. All right. Minerals Management Service and the Bureau of Indian Affairs, neither of them have contacted you since you went down there and since you wrote the letter; is that right?

Mr. DECKER. That's right.

Ms. SOLLER. Have you ever yet gotten an answer from any governmental agency to the questions you have?

Mr. DECKER. No.

Mrs. DECKER. No answer.

Mr. DECKER. No answer.

Ms. SOLLER. Ms. Limpy, I'd like to turn to you for a minute.

You're one of the original plaintiffs in the lawsuit that Mr. Moore talked about; is that right?

Ms. LIMPY. I am.

Ms. SOLLER. And at the time the lawsuit was filed, what was your personal situation?

Ms. LIMPY. I wasn't getting any checks. I wasn't getting any answers to my questions.

Ms. SOLLER. Now you are the relative or the heir of somebody who was also an original owner of restricted land; isn't that right?

Ms. LIMPY. Yes, ma'am.

Ms. SOLLER. And the checks that you received, were you using those for your day-to-day living or were they for extra purposes?

Ms. LIMPY. I was using them for my day-to-day living and the sole support of my three children.

Ms. SOLLER. Where are you living now?

Ms. LIMPY. I live in Oklahoma City in an abandoned house.

Ms. SOLLER. Why are you living in an abandoned house?

Ms. LIMPY. Because I cannot pay my rent.

Ms. SOLLER. All right. Just take your time. Is the money that you received from oil and gas royalties something that you would normally use to pay your rent?

Ms. LIMPY. Yes.

Ms. SOLLER. Okay. And is it true that, in fact, you don't qualify for any kind of State assistance because you're on the rolls as a royalty owner and, therefore, they assume you're getting money?

Ms. LIMPY. Yes.

Ms. SOLLER. In fact, isn't it true that the State has taken your children away from you right now because you can't support them?

Ms. LIMPY. Yes.

Ms. SOLLER. Isn't it also true, Ms. Limpy, that the reason why you need to rely on welfare or on your royalty checks is because you're physically unable to work?

Ms. LIMPY. Yes.

Ms. SOLLER. Do you know where the money that is coming from the royalties from your wells is going?

Ms. LIMPY. No.

Ms. SOLLER. Why not?

Ms. LIMPY. There's no accountability.

Ms. SOLLER. Do you get explanation of payment forms?

Ms. LIMPY. I get those, but——

Ms. SOLLER. Can you understand them?

Ms. LIMPY. No, I can't.

Ms. SOLLER. Do you get them regularly? Do you get them every single month?

Ms. LIMPY. Yes, now.

Ms. SOLLER. If a well stops producing or if there isn't a check, do they tell you why you don't get a check?

Ms. LIMPY. No.

Ms. SOLLER. Now have you made attempts in person to try to find out from the Bureau of Indian Affairs?

Ms. LIMPY. Yes, I have.

Ms. SOLLER. Okay. Have you tried to contact Minerals Management Service at all?

Ms. LIMPY. Yes, I have.

Ms. SOLLER. Have you gotten answers to questions?

Ms. LIMPY. No, I have not.

Ms. SOLLER. In addition to trying to find out what these payments mean, have you also reported that you believe that there is theft going on from your property?

Ms. LIMPY. Yes, I have.

Ms. SOLLER. What did you report?

Ms. LIMPY. It was reported that there were trucks going in and out of this lease that Koch Oil Company had bought from Tenneco.

Ms. SOLLER. Were you getting checks during this time?

Ms. LIMPY. No.

Ms. SOLLER. What were you being told?

Ms. LIMPY. We were being told that our oil was being stolen.

Ms. SOLLER. Have you been able to determine or has anybody told you whether or not, in fact, there is theft going on on your land or whether or not everything is all right?

Ms. LIMPY. They say there is theft.

Ms. SOLLER. Has BIA or BLM or any Government agency checked into this, to your knowledge?

Ms. LIMPY. No, they have not.

Ms. SOLLER. And the agency you go to is the Concho Agency; is that right?

Ms. LIMPY. Yes, ma'am.

Ms. SOLLER. Now you heard what the Deckers just talked about, about dealing with Anadarko. Have you had similar problems at Concho?

Ms. LIMPY. Yes, ma'am.

Ms. SOLLER. Now your lands were audited by the Minerals Management Service at one point after this lawsuit was filed; isn't that true?

Ms. LIMPY. Yes, ma'am.

Ms. SOLLER. Did you ever get a copy of that audit?

Ms. LIMPY. No.

Ms. SOLLER. Did they ever tell you after they did the audit what they had found?

Ms. LIMPY. No.

Ms. SOLLER. At some point this year you did get a copy of the audit, though; right?

Ms. LIMPY. Only when we went to the agency and had them look in our files.

Ms. SOLLER. And that was three years after the audit was done?

Ms. LIMPY. Yes.

Ms. SOLLER. And you've now seen the audit, though; right?

Ms. LIMPY. Yes.

Ms. SOLLER. And they found that the company was not paying on some of your wells, among other problems; right?

Ms. LIMPY. Yes.

Ms. SOLLER. Did that problem clear up for good?

Ms. LIMPY. No.

Ms. SOLLER. In fact, they had to do another audit again this year on that same well; right?

Ms. LIMPY. Yes.

Ms. SOLLER. Did they do that on their own?

Ms. LIMPY. No.

Ms. SOLLER. What happened?

Ms. LIMPY. It was requested by my brother.

Ms. SOLLER. So after the Minerals Management Service found a problem on one of your wells and fixed it for that period, do you know whether anybody then monitored or checked up on your lease to see whether or not that company or any other company was going to continue with these same problems?

Ms. LIMPY. No one did.

Ms. SOLLER. Ms. Limpy, this committee has heard a lot of testimony about whether or not it's cost effective to do certain things. If there is even a difference of $10 a month coming into you on your wells, is that going to make any difference to you?

Ms. LIMPY. Ten dollars would be three meals. Yes, it would make a difference.

Ms. SOLLER. How do you feel about the way the system is treating you right now?

Ms. LIMPY. Confused, cheated, helpless.

Ms. SOLLER. Mr. Moore, is it, in fact, true that an individual who is on the royalty rolls is going to have trouble even when they have financial difficulty in getting any kind of compensation or support from the Government?

Mr. MOORE. That's absolutely true. I don't think that there's any special treatment for people who are especially poor within Minerals Management Service. I think they show a callous disregard for the problems of allottees whether they're very poor and on the streets or in slightly better financial shape like the Deckers.

I wanted to also reinforce a point that you made with Ms. Limpy, and that is—and to reconfirm a concern that Mr. Tarndash spoke of yesterday, the zero sales reporting problem. When there are no sales on a well, an allottee under the system gets no report that month. There may be production. If there's production of oil and the oil is saved and not sold, then there's no report.

An allottee could have a well in his back yard pumping or her back yard pumping throughout an entire period. If there are no sales, there's no report. Again, the allottee only has to call the system that is just a black box, a black hole. There's no response. That breeds further confusion and mistrust of the whole system.

There are other problems with Anadarko system if you'd like me to go through a couple other——

Ms. SOLLER. Well, is there a problem with the audit program?

Mr. MOORE. There are real problems for the audit program for allottees. In particular, it was described to the committee yesterday the policy decision of MMS to sample only 2 percent of leases within a particular company. An Indian allottee's leases are only audited by accident under that system. There's no elevation of priority in the auditing of allottee leases under that kind of a system.

There's also the problems that we're faced with on behalf of allottees that the tribes are confronting now, the Griles policy decision to accelerate the audit strategy and to close out years before 1983 as of the end of September. That's a particular problem for allottees.

You will probably hear later today from the Minerals Management Service the number of desk audits that they are conducting. I

just would like to forewarn the committee that they will boast of the thousands of desk audits that are being conducted. A desk audit really is of some utility but not a great deal of utility for allottees.

Senator DECONCINI. Mr. Moore, would you explain to us what a desk audit is in your interpretation?

Mr. MOORE. Well, my understanding—and I'm not an oil and gas junkie like Randy Fetterolf and some of his colleagues, but my understanding of a desk audit is under the Minerals Management Service, they basically take the numbers that are plugged into the system at the front end of the system by the oil and gas companies and check those numbers as they go through the system to verify that there were no computational errors made through the system.

Senator DECONCINI. So it's really mathematic auditing and not actual input, verification as to the input of the original——

Mr. MOORE. Absolutely correct; there's no verification of production or value, those issues. It's simply a matter of——

Ms. SOLLER. It's just looking at the forms that go to the Government rather than looking at the source documents themselves.

Mr. MOORE. Right. It's like at the end of the month when you take your bank statement and verify your register and your checkbook. MMS is capable of doing thousands of those very easily.

The system, again, is one of getting the money into the system and pushing it through the system as quickly as possible and getting it to allottees and tribes. MMS is doing a better job of that today than they did six years ago, but they are taking on faith the numbers that are going into the system. It's the old adage, "Garbage in, garbage out." They can't verify the numbers that come into the system at the front end.

That's a particular problem that you heard about yesterday. There's no verification at the front end of the system on issues of valuation of underpayment, deductions, and allowances that are taken that may be illegal. The legal theft problems you heard of yesterday. Arithmetic errors, there's no tracking at the front end for potential audit candidates, and those problems are rampant with allottees as well they are with tribes.

Ms. SOLLER. Mary, let me ask you one last question. Are you in a situation now where you would just rather know that you would never get anything again rather than being in this position where you just don't know from one month to the next what you're getting?

Ms. LIMPY. Would you please ask that again?

Ms. SOLLER. Is one of the problems you're having now, you just don't know from one month to the next what you're going to get and, because of this, you can't plan, you can't get on welfare, you can't do anything?

Ms. LIMPY. Yes.

Ms. SOLLER. Is what you're saying really that you'd almost be better off not being any kind of royalty owner at all because then you'd at least know where you stood and you'd be eligible for State benefits?

Ms. LIMPY. Yes.

Ms. SOLLER. Mr. Moore, what can be done? What can be done to improve the system, if anything?

Mr. MOORE. Just to make a quick point before we launch into that, to echo what Ms. Limpy is saying, the average allottee in the Anadarko area probably makes less than $3,000 a year off of their oil and gas interests. This isn't a case of the Clampetts and the Beverly Hillbillies where Indian are getting rich off of their oil and gas. These days with deflated oil and gas prices, in fact there is a run on their ownership of interest in oil and gas, and a lot of Indian people, because of the deflated prices in the industry, are selling off their interests in oil and gas in the Anadarko area. They are losing forever that small amount of money that comes in because, like Mary, they have no other choice; they have to sell it off.

Selling it off and deriving some income and then spending that money down is a way of finally freeing yourself up so that you are eligible for certain Federal and State benefits like food stamps and the FDC. So we're seeing a real land grab on oil and gas interests in the Anadarko area as a result of the current situation.

Ms. SOLLER. And because of that, this is taking some land and some mineral rights out of trust for good?

Mr. MOORE. Yes. These interests are leaving Indian hands and going out of trust forever.

Ms. SOLLER. Is there some way that the system could be changed or legislation could be put in that would allow somebody like Ms. Limpy, who's getting some money from royalties, to still be eligible for some kind of public assistance?

Mr. MOORE. The way to fix that problem is to exempt lease income for purposes of determining allottee or individual Indian entitlement to Federal benefits like food stamps and AFDC benefits, and that's a more widespread problem within the individual Indian world, but certainly in the case of people like Mary Limpy, if the State entitlements people just had hands off with the small amount of income, if say $3,000 or $4,000 of lease income from Indian lands was exempted from entitlement considerations, then she could look forward to a regular receipt of those benefits from these Federal programs.

Ms. SOLLER. What about the whole system itself? Are there certain things that could be done to correct some of the problems you've talked about today?

Mr. MOORE. Well, after sitting here yesterday and listening to some of the success stories in the tribal world, stories that I've been aware of for some time as tribes like Southern Ute have really geared up and taken over their systems very, very capably, I think tribes are in a real envious position—excuse me, allottees are in an envious position. They don't have the ability like a tribal government with sovereign powers to impose severance taxes on their land and to get the kind of production information, sales information that the tribal government is entitled to.

There are ways, though, I believe of amending FOGRMA to at least attempt to put allottees on a parity with tribes. Now I haven't thought about this a lot, and I'm not in favor of eliminating the trust responsibility, but one of the problems that I see with the Minerals Management Service is there's no particular branch of MMS that is accountable for the problems of allottees.

One possible solution might be creating with MMS an associate director for allottee royalty management problems, for allottee roy-

alty management generally, making that person accountable to the director of MMS and to the Secretary of the Interior. In our advocacy efforts on behalf of Indians in other areas there are other agencies you can point the finger at. There's the Indian Health Service. There is the BIA. There is the Office of Indian Education within BIA. There are those branches of agencies and agencies themselves that you can put under the gun and make them responsible.

Within MMS there is not that one office. There is the State and Tribal Support System Office, the STAT system, and then there is the Office of External Affairs that points the finger at the BIA when allottees have a problem. That's it within MMS. That is a deplorable situation within MMS and it leads to the kind of systemic problems that allottees have. The lack of accountability is obvious. That could be shored up within FOGRMA.

I think tribes, like Mr. Phillips yesterday from the Creek Nation, are frustrated with the level of accountability and responsiveness of MMS. They would prefer to just take the system over themselves and probably allottee owners associations could do that, but I would not, for one, like to see the Federal Government off the hook. There is a trust responsibility.

I think that many systems could be set up to deal with royalty management problems within each Indian area, within the Anadarko area. There are 19 tribes. It would be more difficult in that kind of a situation for a tribe to take over or assume some of the responsibility or the responsibility for royalty management for their allottees. That might work at Navajo; that might work at Southern Ute; it might work at Wind River, but in a situation like Anadarko where there are 19 tribes I don't think that it would work.

In Oklahoma the situation is a little different. Tribes are not large landowners. They don't have large holdings of oil and gas interests. They are developing the systems to manage their own royalties, but those systems are slower in being developed than the other tribes further west in the United States.

So, as a result, tribes in Oklahoma don't have the institutional capability yet to manage their own resources and to take the allottee's resources under their wing. There might be a way of devising a consortium of allottees and making them into some kind of a corporate structure to advise the Minerals Management Service in the management of their royalties, to develop audit strategies for Anadarko as opposed to global audit strategies where allottees' problems fall through the cracks.

I think there are a number of creative solutions that we could come up with to solve this problem. It's obvious the system right now doesn't deliver solutions; it delivers more problems.

Ms. SOLLER. Mr. Chairman, I do not have any further questions.

Senator DECONCINI. Let me just ask you: You are involved in litigation, which you started your testimony with, in 1984 and you have had—what was it that you said you had, that the judge had under advisement for three years?

Mr. MOORE. A motion for summary judgment.

Senator DECONCINI. A motion for summary judgment. Who is this judge?

Mr. MOORE. Ralph Thompson.

Senator DECONCINI. Thompson? And what recourse do you have when a judge refuses to act?

Mr. MOORE. Well, the recourse that we've used to date is to write him numerous times and to call his clerk monthly.

Senator DECONCINI. What kind of answer do you get?

Mr. MOORE. "We're working on it." We do have some——

Senator DECONCINI. Why do you think he would refuse to make any action whatsoever? It sounds to me grossly negligent on a judge's part, unless there is some legal basis, to keep something under advisement for three years.

Mr. MOORE. Well, without responding on that particular issue, I'd like to say that the issues that we have before him on summary judgment are the easy issues under FOGRMA. We sought a ruling from him on the question of timeliness of payment because at that time our clients were not receiving monthly checks, on the issue of the EOP report with payment, and then the problem, which is a very serious problem that we haven't talked about, and that is of interest owed to allottees when there's a late payment either from the industry payor or from the Federal Government into the individual Indian account.

Now we selected those issues because we thought they were open and shut, because the factual issues were not in dispute. I don't know why he's not ruling.

Senator DECONCINI. I don't want to put you in a bad position on behalf of your clients, but is this judge refusing to do his job or would you rather not comment?

Mr. MOORE. I guess I'd rather not comment.

Senator DECONCINI. Let me just draw a conclusion, then, myself that it seems just inexplicable that a Federal judge would refuse to act, particularly in these particular cases—is Ms. Limpy one of the cases?

Mr. MOORE. She is a named plaintiff.

Senator DECONCINI. She is a named plaintiff. When you have that, it doesn't make any difference who the plaintiff is, but when you have the obvious need of a citizen in response to the judicial system and the judicial system fails to even make a judgment, even against them, it is next to outrageous.

Mr. MOORE. I might also add that the judge at one time dismissed the case without prejudice. During the pendency—during the period of time when he has before him a motion for summary judgment, that was dismissed without prejudice and we were able to refile the case, in effect, but I don't know what's going on in the Western District.

I think that he would prefer that we settle the case. I think that he would prefer that Congress bail this out of this complex situation.

Senator DECONCINI. So would the savings and loan and some other people like to see Congress bail them out, but that isn't the duty of a judge, to wait for the Congress or the litigants to settle it; he's supposed to act.

Let me ask you one other question here. Your client, one of your named plaintiffs, Ms. Limpy indicated that she was told about theft on the oil. Do you know any of the details of how that came about?

Mr. MOORE. No, I'm not personally familiar with that.

Senator DECONCINI. Ms. Limpy, would you care to respond to how that came about? Where did you get the information that there was theft?

Ms. LIMPY. The farmer that leases the land, the well was capped for two years after—well, they discovered oil and gas a month prior to the expiration of the lease, and it was capped for 2 years, according to them, to find buyers for the oil and the gas. Then, according to them, Koch Oil purchased the oil. The farmer, he was getting very angry because he said there were reports of trucks—he had seen trucks going in and out, and they were running all over his crop. The well sets right in the middle of the land. Where they would go in and back up and just run all over his—so he got very angry. He mentioned this to us a lot of times.

He went as far as to put a lock on the gate, and they busted the lock.

Senator DECONCINI. You own the land and lease it to the farmer?

Ms. LIMPY. Yes.

Senator DECONCINI. And then you have a lease to the oil company——

Ms. LIMPY. Yes.

Senator DECONCINI [continuing]. And the gas company?

Thank you very much. I have no further questions.

Senator McCain?

Senator MCCAIN. I have no questions.

Senator DECONCINI. Thank you very much, witnesses. We appreciate your testimony here.

[Prepared statement of Ms. Limpy appears in appendix:]

Senator DECONCINI. The next panel of witnesses will be Ken Young, employee of the BIA Oil and Gas Division, and Yvonne and Richard Curry, owners of allotted land on the Northern Ute Reservation.

Would you all please raise your right hand?

[Witnesses sworn.]

Senator DECONCINI. Please be seated.

Ms. Soller?

Ms. SOLLER. Thank you.

STATEMENT OF KENNETH YOUNG, EMPLOYEE, BIA OIL AND GAS DIVISION, UINTAH AND OURAY AGENCY, FORT DUCHESNE, UT, AND YVONNE AND RICHARD CURRY, OWNERS OF ALLOTTED LAND, NORTHERN UTE RESERVATION, ROOSEVELT, UT

Mr. Young, I would like to start with you. You're an employee of the BIA; is that right?

Mr. YOUNG. Yes.

Ms. SOLLER. And what is your position?

Mr. YOUNG. I'm the petroleum engineer.

Ms. SOLLER. Where?

Mr. YOUNG. At Uintah and Ouray Agency in Ft. Duchesne, Utah.

Ms. SOLLER. What is your background for that position?

Mr. YOUNG. I have a bachelor's of science degree from Utah State University in geology. I worked for five and a half years both

as a consultant and engineer for oil companies in the Uintah Basin.

Ms. SOLLER. The position that you have right now at the BIA, do you know whether or not that is a position that is found in every or in any other BIA agency in the country?

Mr. YOUNG. That's the only agency that has a petroleum engineer's position.

Ms. SOLLER. Now are you in contact with other individuals who are oil and gas realty officers or oil and gas experts in some form in BIA offices?

Mr. YOUNG. Some area offices have minerals and oil and gas specialists. Yes, I'm in contact with them.

Ms. SOLLER. Do you know what the background of most of these people is?

Mr. YOUNG. Either geologists or petroleum engineers.

Ms. SOLLER. In most offices, though, what is the background of the person who handles the oil and gas leasing and oil and gas compliance for the agency?

Mr. YOUNG. Realty background, a realty officer or a realty specialist.

Ms. SOLLER. Does that include any kind of oil and gas expertise?

Mr. YOUNG. No.

Ms. SOLLER. So it's basically like real estate work; is that right?

Mr. YOUNG. You could come up from a clerk typist up to the BIA to a realty officer just through the BIA system.

Ms. SOLLER. Now you've been on BIA-wide task forces or groups to discuss oil and gas matters; is that right?

Mr. YOUNG. Yes, I was on the task force to finalize the 211 and 225 regulations.

Ms. SOLLER. And those are the valuation regulations for oil and gas?

Mr. YOUNG. They're the leasing of Indian or tribal and allotted lands and the 1982 act agreement regulations.

Ms. SOLLER. Now from your contact with other people on these committees, do you have a sense as to whether or not most of the oil and gas realty people employed by the BIA across the country have any real understanding of the oil and gas industry?

Mr. YOUNG. They have a good understanding of the realty function of the Bureau of Indian Affairs. Whether they have a knowledge of oil and gas industry practices and procedures, I don't think so.

Ms. SOLLER. So is it fair to say that an individual of your background and the position in which you are currently employed is a unique position in agency offices in the Bureau of Indian Affairs across the country?

Mr. YOUNG. Yes.

Ms. SOLLER. Why was your position created at U and O?

Mr. YOUNG. We had a superintendent that had problems. We had an oil boom, a superintendent that had the tribe hiring oil and gas experts coming forth with 1982 act agreements that the BIA wasn't able to handle. His agency didn't have the expertise to handle the type of agreements that were coming forth.

Ms. SOLLER. Why isn't such a position created at every place across the country?

Mr. YOUNG. I have no idea.

Ms. SOLLER. Do you think it would be helpful to have a position like yours in other offices that deal with oil and gas properties?

Mr. YOUNG. Yes. They have created an office of technical experts for the BIA in Lakewood, Colorado. Theoretically, the way the system works is all technical questions go through that office.

Ms. SOLLER. That's the Office of Energy and Minerals in Lakewood?

Mr. YOUNG. Yes.

Ms. SOLLER. Have you used that office in the past?

Mr. YOUNG. Yes.

Ms. SOLLER. And what is your experience or your opinion of the work that they did for you on the proposals you submitted to them?

Mr. YOUNG. I've submitted at least six different proposals to them, and the first one we did was a basic lease agreement of about 6,000 acres. They did a fairly good job of analyzing that, and it was just a basic lease type of agreement over a large area.

The next agreement was an agreement for an oil refinery where the tribe would earn an equity position in the refinery. They had an economics package run on it by the Bureau of Mines. Since then, we haven't had—the other agreements have come back with one paragraph saying basically you can do it under the lease.

Ms. SOLLER. Have comments like that been very helpful to you or would you prefer to see a technical division doing more?

Mr. YOUNG. Well, we knew we could do it under the lease or we would have never have sent the—let the tribe—the tribe would have never entered into the agreement. It wasn't a question—the way the system was set up, though, was you were supposed to send this stuff up the line and let everybody take a crack at it and give their comments back down to the office.

Ms. SOLLER. So do you think that more could be done at a technical level in the BIA?

Mr. YOUNG. The types of agreements that the tribes are entering into are very complex. They're getting into in-kind profit sharing, revenue sharing, management type agreements that aren't your basic lease agreements. So I think we're hampered by not having at an agency level people that can analyze those types of agreements.

Ms. SOLLER. I'd like to turn to an area where somebody with your expertise can do more for tribes or allottees than, say, an individual who just has realty background. Specifically, in the area of lease compliance, have you found circumstances where, because of your background, you've been able to move in a different way than somebody who did not have your background?

Mr. YOUNG. Yes.

Ms. SOLLER. Okay. Can you give us an example of that?

Mr. YOUNG. Under the system, if a BIA office thinks there's noncompliance on a lease, they will write a letter to the BLM and ask the BLM to inspect the well. The BLM will write back and give them advice on whether the well is producing or not producing.

Ms. SOLLER. What can you do instead?

Mr. YOUNG. What I have been able to do is, if I find a well or if the tribe finds a well or a lease that we don't think is producing in

paying quantities, I will personally go out, inspect the well, verify if there is production, take the production reports from the BLM, from the State, and from our payment information from the MMS and determine if there has been production. If there hasn't, I write a letter of cancellation of the lease automatically.

Ms. SOLLER. When you talk about compliance and production, that's because the lease requires that the operator exercise due diligence in producing under the terms of that lease; isn't that right?

Mr. YOUNG. The way an Indian lease is written, it doesn't—it isn't written to allow an operator to shut the well in for an extended period of time. It isn't written so the operator can shut the well in at all, but under a due diligence type of language they are able to shut it in for remedial workovers.

Ms. SOLLER. Now did you actually come across an instance in which a tribal well was shut in for a period of time?

Mr. YOUNG. Yes.

Ms. SOLLER. How long was it shut in?

Mr. YOUNG. Four months.

Ms. SOLLER. How did you find out it had been shut in?

Mr. YOUNG. The tribes' inspectors had driven by the well a number of times. They did some research on it, and they wrote a letter to the BIA asking that I check into the leases.

Ms. SOLLER. When you checked into it, what did you find about this company and the reports it had been making to the Bureau of Land Management?

Mr. YOUNG. The company had filed 3160s with the Bureau of Land Management, which are production reports, that showed zero production, zero sales for the months of December through March.

Ms. SOLLER. So the Bureau of Land Management had in its files for four months reports that this well was not producing?

Mr. YOUNG. Yes.

Ms. SOLLER. Did they ever contact you?

Mr. YOUNG. No.

Ms. SOLLER. And you're the one who is supposed to be in charge of enforcing lease compliance; right?

Mr. YOUNG. Yes.

Ms. SOLLER. Were you able to determine whether or not the Mineral Management Service had reports of no sales and no production as well?

Mr. YOUNG. Yes, I checked our MMS printout and there were no sales on the leases.

Ms. SOLLER. And they had not contacted you other than just having this on the printout?

Mr. YOUNG. No.

Ms. SOLLER. Is that right? And you're the one who is responsible for lease compliance?

Mr. YOUNG. Yes, the BIA.

Ms. SOLLER. But nobody from the other two agencies had told you that here's a well that was not producing for four months?

Mr. YOUNG. Well, under the system that the BLM had at that time, they would receive a 3160 and, if they received a report, they would just put kind of an "X" in this little book that showed that they had received the report. It didn't show that there was produc-

tion. It just said, yes, we received a report, so they're in compliance with the regulations.

Ms. SOLLER. And in this case of the tribal well that was shut in for four months, did you send a notice of cancellation?

Mr. YOUNG. Yes.

Ms. SOLLER. What did the company do?

Mr. YOUNG. They went to the BLM and filed amended 3160s.

Ms. SOLLER. Saying that there, in fact, was production?

Mr. YOUNG. Saying that they had produced the wells. The one showed they had produced for three days, made 10 barrels of oil.

Ms. SOLLER. Were those wells producing, from your inspections?

Mr. YOUNG. No.

Ms. SOLLER. How do you know that?

Mr. YOUNG. The one didn't have a pump in the hole. They are on pump jacks. The other one had a split wellhead and everything was cold. We have very high paraffin oil in the Uintah Basin; you have to keep it hot. If everything is cold, there's no way to produce it.

Ms. SOLLER. So did the fact that they amended their 3160s differ from what you saw in your visual inspection?

Mr. YOUNG. Yes.

Ms. SOLLER. Did you, in fact, cancel this lease?

Mr. YOUNG. Yes.

Ms. SOLLER. Did the BLM go along with you the whole time for this?

Mr. YOUNG. At first they didn't. At first they said that we needed to take in production in paying quantities over a longer period of time, that you couldn't look at it on a 30-day or 6-month period; you had to look at it over a period of time.

Ms. SOLLER. What did you think of that?

Mr. YOUNG. I told them that the Indian lease said they had to have production in paying quantities regardless. It didn't say they could shut the well in at all.

Ms. SOLLER. So you cancelled the lease?

Mr. YOUNG. Yes.

Ms. SOLLER. Who was the lessee on that; do you remember?

Mr. YOUNG. The lessee was Burton Hocks who had a farm-out agreement with a company called Ironwood.

Ms. SOLLER. Now were there other examples specifically involving allottees of wells that were shut in——

Mr. YOUNG. Yes.

Ms. SOLLER [continuing]. That you discovered?

Mr. YOUNG. Yes.

Ms. SOLLER. What did you find out?

Mr. YOUNG. I had an allottee come in and ask me why he hadn't been receiving any oil and gas income for over half of a year. I went in and looked up his ownership. He owned a lot of land in a lot of different areas. I looked up the leases, and most of his production came out of a gas field south of Ft. Duchesne.

Ms. SOLLER. Did you determine whether wells were shut in there?

Mr. YOUNG. I went out to the field and the wells were all shut in. There were about 20 wells in the field and they were all shut in.

Ms. SOLLER. Was that by one company?

Mr. YOUNG. Conoco was the company.

Ms. SOLLER. How many allottees did this involve?

Mr. YOUNG. There were probably 300 individuals that receive allottee payments off of the land.

Ms. SOLLER. And had Conoco been reporting to the Bureau of Land Management that it was not producing and there were no sales off of that?

Mr. YOUNG. Yes.

Ms. SOLLER. Had the Bureau of Land Management ever contacted you to tell you that these leases were out?

Mr. YOUNG. No.

Ms. SOLLER. How about MMS, did they ever contact you directly?

Mr. YOUNG. No.

Ms. SOLLER. Have they ever told the allottees, to your knowledge, that these wells were shut in?

Mr. YOUNG. No.

Ms. SOLLER. Did the allottees have any way of knowing from their explanation of payment forms why they weren't getting checks?

Mr. YOUNG. No.

Ms. SOLLER. What did you do in that case?

Mr. YOUNG. The first thing I did was call Conoco and ask them what was going on. They said that they had shut the wells in for seven months, that they in a force majeure problem with their contract with Mountain Fuel Supply.

Ms. SOLLER. That means that their purchaser allegedly isn't buying from them, is that right, because of some market condition?

Mr. YOUNG. Yes, there's a clause in the contract that allowed Mountain Fuel not to take the gas. Conoco, on the other hand, indicated that they were ready, willing, and able to supply gas, but there were no sales.

Ms. SOLLER. After you contacted them, you said you were going to cancel their lease; is that right?

Mr. YOUNG. Yes. I told them that under their lease they had agreed to produce the wells every month and that I would be cancelling their leases.

Ms. SOLLER. What did they do instead?

Mr. YOUNG. They—I wasn't sure that I could cancel the leases under that type of agreement because I wasn't sure if there was any case law to show that a force majeure in a contract could hold an Indian lease, but I told them that they had the option of paying compensatory royalties as if they had sold the gas and also that they could start selling gas as soon as possible.

Ms. SOLLER. And did they?

Mr. YOUNG. They started selling gas the next month.

Ms. SOLLER. So, despite the fact they said that they couldn't sell it for seven months, after you contacted them they could suddenly sell it?

Mr. YOUNG. When they thought their leases were in jeopardy, they entered into an agreement to sell the gas at a lower rate and they did sell the gas, yes.

Ms. SOLLER. And that started the royalties again?

Mr. YOUNG. Yes.

Ms. SOLLER. In your opinion, would an individual without an oil and gas background, with just a realty background, have been able

to take the actions you took in the Ironwood case and the Conoco case?

Mr. YOUNG. No.

Ms. SOLLER. What would have happened instead?

Mr. YOUNG. They would have written a letter to the BLM, and the BLM would have written back saying that the wells were held by production.

Ms. SOLLER. And that's the occurrence in most agencies; is that right?

Mr. YOUNG. That's what it appears. Prior to when I started with the BIA, I have files showing that that's what was done.

Ms. SOLLER. Now, in addition to lease compliance, do the allottees have other problems as well?

Mr. YOUNG. I have allottees come in about every day asking about these explanation of payments.

Ms. SOLLER. Do they understand them?

Mr. YOUNG. There's no way they can understand them.

Ms. SOLLER. Do you understand them?

Mr. YOUNG. I understand what's on them, yes.

Ms. SOLLER. Can you, by looking at that, determine what somebody's lease royalty rate is?

Mr. YOUNG. The problem with them is that they have too many fluctuating numbers on them. An allottee knows what his royalty rate is. He signed a lease. His royalty rate might be 16 and two-thirds. It might be——

Ms. SOLLER. Can you tell from those forms?

Mr. YOUNG. On this—this is a Houston Decker one—the royalty rate, there's a 20 percent and a 10 percent, 19.3—there's a bunch of different percentages.

Ms. SOLLER. That's not what the lease royalty rate calls for, does it?

Mr. YOUNG. The problem is the number fluctuates. Their interest fluctuates. You go down to the owner's interest, it's a decimal interest based on their ownership in the allotment. It fluctuates.

Ms. SOLLER. So when you say you can read this, but there are problems with it, can you really tell from this, if somebody had a problem about why something is a negative, could you answer that?

Mr. YOUNG. No.

Ms. SOLLER. What would you do if you got a form like this?

Mr. YOUNG. I have owned oil and gas interests in the past and I've received checks from oil companies. I have no problem understanding what an oil company would send me.

Ms. SOLLER. Those are like these other two forms here?

Mr. YOUNG. It tells you how much they produced, how much they sold, how much taxes are withholding, and this is your interest and this is how much your check is.

Ms. SOLLER. Can you read that explanation of payments and understand it to the same degree?

Mr. YOUNG. You can't get that off an explanation of payments.

Ms. SOLLER. So what are you supposed to do?

Mr. YOUNG. What you're supposed to do is come in and ask the BIA to tell you what it says and then we're supposed to get on STATS and be able to go through a desk review at the agency. If

we're unable to answer their questions, we're supposed to send an audit request to the area office. If the area office can't answer it, they're supposed to send it to the Lakewood office of the BIA. If they can't answer it, they're supposed to send it to the MMS for a desk review. That's the audit procedure that's been set up.

Ms. SOLLER. And, in fact, the Currys did do that; isn't that right?

Mr. YOUNG. Yes, the Currys have been through that process.

Ms. SOLLER. Mrs. Curry, you are the owner of restricted lands at U and O; isn't that right?

Mrs. CURRY. Yes.

Ms. SOLLER. That's Uintah and Ouray and the Northern Ute Reservation near Ft. Duchesne, Utah?

Mrs. CURRY. Yes, it is.

Ms. SOLLER. And do you get explanation of payments forms like this?

Mrs. CURRY. Not lately, but I used to.

Ms. SOLLER. Could you understand them?

Mrs. CURRY. No.

Ms. SOLLER. Did there come some time after receiving these for a while that you and your husband went to the Bureau of Indian Affairs to try to find out what was going on with your lease?

Mrs. CURRY. Yes, we did.

Ms. SOLLER. And why was that?

Mrs. CURRY. Pardon?

Ms. SOLLER. Why did you go to them?

Mrs. CURRY. Because we wanted to know what was going on, what all those figures were.

Ms. SOLLER. Mr. Curry, was there some reason in particular why you went about a year ago?

Mr. CURRY. Basically, a lot of the money that she received—not a lot, I mean what she receives, we use it to pay bills and other things. Even though the price of oil had gone down, we assumed about 40 percent. All of a sudden her checks went down about 80 or 90 percent, and trying to figure out what those things said, and we went to the BIA. We didn't know what was wrong. We only had to figure that something was wrong. We didn't know where it was, but it just didn't look right.

Ms. SOLLER. And you're retired; is that right?

Mr. CURRY. Yes.

Ms. SOLLER. And your wife, though, works; isn't that correct, Mrs. Curry?

Mrs. CURRY. That's right.

Ms. SOLLER. Where do you work?

Mrs. CURRY. I work at the Indian Health Service.

Ms. SOLLER. And it's true that you had to take personal leave from the Indian Health Service to be here today?

Mrs. CURRY. Yes, I did.

Ms. SOLLER. Now, Mr. and Mrs. Curry, you use this income from the leases to live on; is that right?

Mr. CURRY. It supplements our income. We juggle it a lot.

Ms. SOLLER. When the lease income went down 80 to 90 percent, did that have an effect on the way you lived?

Mr. CURRY. Yes, we, just like anybody else, we just didn't have the money to spend. Fortunately, we raised our children and they're not in the home anymore, at least most of the time.

Ms. SOLLER. Now when you went to the Bureau of Indian Affairs, did you see Mr. Young?

Mr. CURRY. Among others.

Ms. SOLLER. And who else did you see?

Mr. CURRY. We saw the realty officer, Roland McCook who it was obvious to us didn't know anything about oil and gas.

Ms. SOLLER. He had been the oil and gas person before Mr. Young; isn't that right?

Mr. CURRY. I didn't know that, but he could have fooled me.

Ms. SOLLER. Who else did you talk to?

Mr. CURRY. We saw Ken's assistant, a lady, Diane. We saw the superintendent.

Ms. SOLLER. Were any of them able to explain to you what some of these numbers were on your form or as to why your royalties had gone down 90 percent?

Mr. CURRY. No, they couldn't explain why the royalty went down, but they could explain a lot of the numbers except when we asked Ken, there were certain things that apparently he couldn't explain, either.

Ms. SOLLER. So what did you do?

Mr. CURRY. Cried a lot.

Ms. SOLLER. Did you ask for an audit?

Mr. CURRY. We asked. We met with Ken and the superintendent, and we felt we don't know what's wrong but we do feel that there has to be something wrong with a change in the income of that much. So they suggested that we apply for an audit.

Ms. SOLLER. And did you write for an audit?

Mr. CURRY. Yes, we did.

Ms. SOLLER. When was that?

Mr. CURRY. It was in April 1988.

Ms. SOLLER. Was your case accepted for audit?

Mr. CURRY. In July 1988.

Ms. SOLLER. Have you gotten it back yet?

Mr. CURRY. We haven't even heard from MMS except through Ken; he contacted them, but they personally have never written us a letter or answered any other letters that we have written to them.

Ms. SOLLER. Have you ever gotten an answer yet to the questions you've asked?

Mr. CURRY. We have not.

Ms. SOLLER. Is that okay with you?

Mr. CURRY. No, it isn't.

Ms. SOLLER. Mr. Young, have you heard from MMS?

Mr. YOUNG. Yes.

Ms. SOLLER. And what have they said?

Mr. YOUNG. They said they're working on it.

Ms. SOLLER. When this comes back, this is going to be a full-blown audit were they compare the company records and everything; is that right?

Mr. YOUNG. No, they're doing a desk audit to determine if it needs to have a full-blown audit done on it.

Ms. SOLLER. So, since April of 1988 to now, the best that they're working on is a desk review?

Mr. YOUNG. Yes.

Ms. SOLLER. If after the desk review they determine that they need to do a full audit, is that going to be additional time?

Mr. YOUNG. Definitely.

Ms. SOLLER. Have you had other requests by allottees for audits at your reservation?

Mr. YOUNG. Yes.

Ms. SOLLER. Have you referred those down to Lakewood for an audit?

Mr. YOUNG. No.

Ms. SOLLER. Why not?

Mr. YOUNG. I've told the individuals that I would wait and see what they did with the Curry audit because, if they can—it's been a year with the Curry audit and they still haven't even done the desk review. So there's really no reason to send other audits up if they can't do this one; I don't see the reason.

Ms. SOLLER. Mr. Young, you've got, as you have explained already, some expertise in oil and gas.

Mr. YOUNG. Yes.

Ms. SOLLER. And you can't make this system come up with an answer inside of 13 months then; is that right?

Mr. YOUNG. No.

Ms. SOLLER. What's somebody without your expertise supposed to do?

Mr. YOUNG. I don't know. I would hate to be put in the position of an allottee oil owner.

Ms. SOLLER. Senator, I would have no further questions.

Senator MCCAIN. Mr. Young, you said you would not like to be put in the position of an allottee oil owner. What do we need to do?

Mr. YOUNG. I think—I don't think that they could be any worse off if we had an oil company pay them direct—and audit what is being paid. We audit the oil companies now. Thousands—millions of individual Americans receive oil checks from oil companies every day.

Senator MCCAIN. So in the case of allottees, you would recommend we just eliminate the Federal bureaucracy and audit the oil companies directly from time to time? That would be the only role of the Federal Government?

Mr. YOUNG. I would, if I were an allottee, that's what I would prefer.

Senator MCCAIN. Do you believe that the lack of auditing and lack of accountability here is due primarily to underfunding of the bureaucracies?

Mr. YOUNG. I don't know how much money they get. I don't if it's because they don't have the positions or the money.

Senator MCCAIN. Is it your view that there are people in positions in the bureaucracy who are tasked to do these—to carry out these responsibilities?

Mr. YOUNG. I think the way the system is set up with MMS and the BLM and the BIA, that it is supposed to take care of the problem.

Senator MCCAIN. And in your view, in your personal opinion, they are not?

Mr. YOUNG. From what I see from the allottee's standpoint and from sitting in an agency, no.

Senator MCCAIN. Thank you very much. Thank you, Mr. Chairman.

Senator DECONCINI. Thank you.

Let me just ask you a question so I understand this, Mr. Young. If a company has a lease and they are supposed to produce, and you can go out there and demonstrate that they are not and give them notice of cancellation of the lease, they come back and appeal or start to produce so they're back in good status, is there any penalty for their not complying during the period of time that you verified they didn't produce?

Mr. YOUNG. No.

Senator DECONCINI. Nothing? So it's really no sweat to them. They just stop and, once they get notice, they can crank up again and then they're off scot-free; is that right?

Mr. YOUNG. Well, if the superintendent from the agency sends out a cancellation notice to a company, they have the right under the CFR to appeal it——

Senator DECONCINI. Appeal it, yes.

Mr. YOUNG [continuing]. To the area director. If the area director supports the superintendent, they can appeal it up and up, and finally go into a Federal court.

Senator DECONCINI. What's your experience? Once they start reproducing—once they appeal the notice of cancellation and start reproducing, those two things, what happens to that appeal? Does it usually come down in their favor?

Mr. YOUNG. I've had them go both ways.

Senator DECONCINI. Have you? So there have been some cancellations?

Mr. YOUNG. Yes.

Senator DECONCINI. That you know of?

Mr. YOUNG. Yes.

Senator DECONCINI. How many in your experience? Over a period, say, the last four years how many has there been? Can you just give us a ball park number?

Mr. YOUNG. Four leases.

Senator DECONCINI. Four leases have been cancelled?

Mr. YOUNG. Yes.

Senator DECONCINI. And those were appealed and the appellate authority sustained your——

Mr. YOUNG. Yes, they sustained it and the company just——

Senator DECONCINI. Just went out of business?

Mr. YOUNG. Well, they just gave up the leases.

Senator DECONCINI. Yes. And had they started to reproduce——

Mr. YOUNG. Oh, yes, they——

Senator DECONCINI [continuing]. During that period of time?

Mr. YOUNG. They spent a couple of hundred thousand dollars trying to get the wells back into production so they could hold the leases.

Senator DECONCINI. Do you know what happened to those wells later? Were they re-leased?

Mr. YOUNG. No, we just finalized—the appeal process was just finalized.

Senator DECONCINI. I see.

Mr. YOUNG. And the tribe is now looking at re-leasing the land and the wells.

Senator DECONCINI. And you've had some that have been reversed on you, so to speak?

Mr. YOUNG. Yes.

Senator DECONCINI. How many in the last several years?

Mr. YOUNG. The one that has been reversed is in a communitization agreement problem similar to the Shell appeal that happened about six years ago, which is a piece of property that was leased out to different companies, the same piece of property. The realty office had leased it out while it was still held under the communitization agreement.

Senator DECONCINI. And——

Mr. YOUNG. That's been——

Senator DECONCINI [continuing]. You cancelled the lease or you sent notice?

Mr. YOUNG. I cancelled the first lease based on [illegible] of production.

Senator DECONCINI. Have you had three of four during the last, say, four years where they have not sustained your position, or have you had less or——

Mr. YOUNG. I have had a number where I have cancelled the lease and they have not appealed at all.

Senator DECONCINI. They have not appealed?

Mr. YOUNG. They have not appealed at all.

Senator DECONCINI. Because they don't want to; they agree with you?

Mr. YOUNG. It's quite evident that they didn't have production.

Senator DECONCINI. Yes. How many have you had where they have appealed and they have reversed you?

Mr. YOUNG. One.

Senator DECONCINI. Just one in the last——

Mr. YOUNG. Three years I have been with the Bureau.

Senator DECONCINI [continuing]. The last three years?

Mr. YOUNG. Yes.

Senator DECONCINI. Thank you. Thank you very much.

Do you have any further questions?

Ms. SOLLER. None.

Senator DECONCINI. Thank you very much, Mr. and Mrs. Curry. We appreciate your testimony, and Mr. Young.

Our last panel will be Jeffrey Southwick and Benjamin Binder, and also Vern Ingraham. Excuse me, Mr. Ingraham is going to be next. Oh, he's going to be separate. Okay, very good.

Gentlemen, would you please raise your right hands.

[Witnesses sworn.]

STATEMENT OF JEFFREY P. SOUTHWICK AND BENJAMIN BINDER, CONSULTANTS, OKLAHOMA INDIAN LEGAL SERVICES AND NATIVE AMERICAN RIGHTS FUND

Ms. SOLLER. Mr. Southwick, let me start with you. What is your background, please?

Mr. SOUTHWICK. I have an undergraduate degree in accounting from Western New Mexico University. I just completed my juris doctor degree from Oklahoma City University. I'm enrolled at Tulane University in a graduate degree program in energy and environmental law.

Ms. SOLLER. Do you also have a background in oil and gas?

Mr. SOUTHWICK. Yes, I do.

Ms. SOLLER. In what context?

Mr. SOUTHWICK. I worked as an accountant when I first graduated from college for a small, independent oil and gas company and did joint interest audits, reviewed production, posted production, filed taxes, things of this nature. So about the last 13 years of my life have been involved in the oil and gas business.

Ms. SOLLER. And are you doing consulting work now for the Oklahoma Indian Legal Services and for the Native American Rights Fund?

Mr. SOUTHWICK. Yes, I am.

Ms. SOLLER. In that context, have you done some analysis of some of the allottee oil and gas problems in western Oklahoma?

Mr. SOUTHWICK. Yes, I have.

Ms. SOLLER. Have you discovered some problems with these?

Mr. SOUTHWICK. Many.

Ms. SOLLER. I'd like to turn to one we've talked about before, and that's the explanation of payment forms. Do you think that this form in itself is a problem?

Mr. SOUTHWICK. Pardon me? I'm sorry.

Ms. SOLLER. Do you think that form creates problems?

Mr. SOUTHWICK. Absolutely.

Ms. SOLLER. Why?

Mr. SOUTHWICK. The information that's posted in it has absolutely no bearing to some of the occurrences on the oil and gas property that it's producing from. The adjustments are confusing. They are misleading. There have been arithmetic errors, price deviations. They roll up adjustments to where it only posts out as one line item.

Ms. SOLLER. By "rollups," you mean that the company may report three or four different lines or different items of information that MMS then, when they get, combines into one figure that appears on this form; is that right?

Mr. SOUTHWICK. That's correct. They do not show the reversing adjustment.

Ms. SOLLER. So if a company makes a payment, say, of $1,000 and later wants to make an adjustment to that and to change it to $600, would it show on these forms that there was a $1,000 payment made and then $1,000 deduction taken because that was wrong and then $600 put back in?

Mr. SOUTHWICK. No, it would just show a $1,000 deduction and the $600 put back in. That's it.

Ms. SOLLER. Can you, by looking at this, and do you know whether allottees can understand what it means when they find a negative number there?

Mr. SOUTHWICK. Well, no, they don't. As a matter of fact, that's why the Deckers first approached me, is because they looked at this long column of lines over here on the righthand column that said your interest and they saw all these $4,000 and $5,000 entries, and they were thinking, "Well, that's what we're supposed to get paid; where's my check?" They never received it.

Ms. SOLLER. Let me ask you, Mr. Southwick, now is the information on this form comparable to the way industry reports it?

Mr. SOUTHWICK. Not at all.

Ms. SOLLER. Are the other two examples that are closer to the Senators here more what industry reports?

Mr. SOUTHWICK. They are.

Ms. SOLLER. Well, what happens when an allottee gets a form that reports a different kind of information than is reported to any other source in the world? Can they compare it?

Mr. SOUTHWICK. Not at all. There's no comparison to the operator's records. There's no comparison to the Oklahoma Tax Commission records, the Oklahoma Corporation Commission records, the purchaser's records, or even industry records that are published to the general public.

Ms. SOLLER. Would you go over to this explanation of payment form for a minute? Can you carry one of those microphones over with you?

Mr. SOUTHWICK. Is that okay?

Ms. SOLLER. Now the first line that's on that form has some digits. What are those?

Mr. SOUTHWICK. What do you want to start with, under the payor?

Ms. SOLLER. Yes. The "payor" means the company; is that right?

Mr. SOUTHWICK. That's right. That payor number is 11110. Apache Corporation is the company that's paying the remittance to MMS.

Ms. SOLLER. And then under the word "payor" there's a number, 61208. What's that number?

Mr. SOUTHWICK. That's the lease identity code.

Ms. SOLLER. And the only way you know that is you have to go back up to the column to read that; right?

Mr. SOUTHWICK. That's correct.

Ms. SOLLER. Even though the word "payor" gets in the middle of it?

Mr. SOUTHWICK. That's correct.

Ms. SOLLER. All right. And then there's a 04 next to it. What's that?

Mr. SOUTHWICK. That's a production code. If you go down to the bottom of the EOP in the lefthand corner, it says "04 unprocessed wet gas." That's telling you what they're paying on.

Ms. SOLLER. So, in other words, you have to keep jumping all over the form to understand it?

Mr. SOUTHWICK. That's correct.

Ms. SOLLER. The next line, "688," what's that?

Mr. SOUTHWICK. That's the month of sales. That's when the gas was actually purchased from the well.

Ms. SOLLER. "073188," what's that?

Mr. SOUTHWICK. That's the due date when the money is supposed to be paid to MMS.

Ms. SOLLER. So, in order to read this, you've got to convert months and dates and years to do it?

Mr. SOUTHWICK. That's correct.

Ms. SOLLER. This form goes to some people who don't speak English; isn't that right?

Mr. SOUTHWICK. That's my understanding, yes, that's true.

Ms. SOLLER. I'm not sure this form is in English. The next one is "083188." What's that?

Mr. SOUTHWICK. That's the date received by MMS. What that indicates, just off this form, as error No. 1, the money was due to MMS in the previous column, 7/31; it was paid to MMS 8/31. Consequently, these people should be paying interest to MMS based upon that information right there.

Ms. SOLLER. The next line is "092888." What's that?

Mr. SOUTHWICK. Okay, it's 9/28/88. That is when the money is credited to the IMM account.

Ms. SOLLER. So, in other words, although the sales month was in June of 1988, they did not receive it to the IMM account until September 28th?

Mr. SOUTHWICK. That's correct.

Ms. SOLLER. The quantity, "42988.98," what's that?

Mr. SOUTHWICK. That's the MCF of gas that was produced off the well. What that actually is telling you is its not 42,000; it's 42,988,000.98 million cubic feet of gas.

Ms. SOLLER. And what's "089."

Mr. SOUTHWICK. That's the unit value.

Ms. SOLLER. What's ".2000"?

Mr. SOUTHWICK. That's the royalty paid on the Indian lease supposedly.

Ms. SOLLER. And is it in this case?

Mr. SOUTHWICK. Yes.

Ms. SOLLER. But in that column going down I see different numbers. What are those?

Mr. SOUTHWICK. Well, those are MMS's derived royalty rates where they do not take and make the correct computation for getting a royalty rate where the royalty rate remains static. They back into it. So depending on the number that's being submitted to them, this number is going to change. It could be—like this is anywhere from three one-hundredths to nearly 20 percent down here down the way to the 1993.

Ms. SOLLER. So sometimes it's the lease rate and sometimes it's not, and you have no way of knowing?

Mr. SOUTHWICK. That's true.

Ms. SOLLER. Okay. The next one next to it?

Mr. BALLEN. Mr. Southwick, why isn't it 20 percent all the time if that's the royalty rate that's involved here? Why does the number vary?

Mr. SOUTHWICK. Well, MMS gave us a 4-page explanation on this particular EOP as to why that occurred. It really didn't make a lot

of sense to us, but whatever numbers they take and put in here, the adjustments, that adjustment automatically calculates the royalty rate on the money that's paid in. So it doesn't give you a full 20 percent. If the volume wasn't adjusted but the dollars were, the royalty rate is going to jump either up or down.

Ms. SOLLER. And to understand that, you have to understand how MMS gets it records and then computes it?

Mr. SOUTHWICK. That's correct.

Mr. BALLEN. Mr. Southwick, isn't the 20 percent part of the lease agreement?

Mr. SOUTHWICK. Absolutely. That's fixed.

Mr. BALLEN. Then how can it go under 20 percent? How can it vary?

Mr. SOUTHWICK. That's MMS's computer system at work. We've complained about this a lot, and they just—explain away the way they make the calculation as a backed-into figure; it's a derived figure. It's not a fixed figure.

Everything else that you see on these industry reports, that royalty figure, the decimal interest stays the same; it never changes. On the Indian lease it's subject to change, as you see here, four or five times in one month.

Ms. SOLLER. Mr. Southwick, the questions that Mr. Ballen and the Senators asked you, are those the questions that allottees ask?

Mr. SOUTHWICK. Every time.

Senator DECONCINI. I'm not sure——

Ms. SOLLER. Let me see if I can straighten it out.

Senator DECONCINI. What I would like you to straighten out for me, too, is under this column across here, then there's another payor and then there's a whole list. Well, if it's—this column here is different than this one; right?

Ms. SOLLER. Yes.

Senator DECONCINI. It is a wholly different lease?

Ms. SOLLER. Let me see if I can straighten it out.

Mr. SOUTHWICK. No, they're on the same well.

Senator DECONCINI. They're on the same well?

Mr. SOUTHWICK. They're on the same well. If you look under the payor code——

Senator DECONCINI. Yes.

Mr. SOUTHWICK [continuing]. It's the same lease number. It says "61208", "61208."

Senator DECONCINI. I see.

Mr. SOUTHWICK. That is kind of confusing. What happened in this particular instance, Apache Corporation took over operations from Cotton; Cotton was assessed a bunch of late penalty payments, and this is the adjustments that they had made after change of operators.

Ms. SOLLER. Mr. Southwick, let me see if I can phrase it the way MMS did. In fact, the individual's lease rate doesn't change; it's always 20 percent?

Mr. SOUTHWICK. That's correct.

Ms. SOLLER. But the reason why it appears different on this form is because of the computations that MMS does when they roll up numbers. You can't tell or you can't verify from this form what lease rate was actually being used?

Mr. SOUTHWICK. That's correct.

Ms. SOLLER. In order to—supposedly, the company, through all of this, is paying on 20 percent, but you'd have to go back to the company's original filings to make sure that that's what they were really doing?

Mr. SOUTHWICK. That's right. You'd have to look at the source document submitted by the company.

Ms. SOLLER. The next number over is what?

Mr. SOUTHWICK. Well, that's the biggest bone of contention that these particular people had, I think, and that was the allowances charge. If you look at it, it's a negative figure. That's money that's being held out of the Indian royalties which is the $7,654.28.

Ms. SOLLER. What percentage of that is of the total?

Mr. SOUTHWICK. That's 34 percent of their monies being taken away in allowances.

Ms. SOLLER. Did they explain why?

Mr. SOUTHWICK. No.

Ms. SOLLER. Was there any prior notice to them it was going to be taken out?

Mr. SOUTHWICK. No.

Ms. SOLLER. What's the next one?

Mr. SOUTHWICK. That's the net amount after the deduction for allowances. You take the information royalties of $7,654, deduct the allowances, and you come to the net amount of $5,030.69.

Ms. SOLLER. And the next one?

Mr. SOUTHWICK. That's the—this particular owner's interest in the allotted tract. It's further broken down now to show what his decimal interest is, and that net amount is multiplied times his interest in the allottee tract to get his owner share.

Ms. SOLLER. Now I would like you to go down the column that says "Rents and Royalties." There are some negative figures there.

Mr. SOUTHWICK. Yes.

Ms. SOLLER. Can you explain exactly what those are by looking at this form?

Mr. SOUTHWICK. No, not at all.

Ms. SOLLER. Now on the second page there is a final figure, "6777.84."

Mr. SOUTHWICK. Yes.

Ms. SOLLER. And then there is another number. Those agree in this circumstance, don't they?

Mr. SOUTHWICK. Yes, they do.

Ms. SOLLER. Do they always agree?

Mr. SOUTHWICK. No. As a matter of fact, more times than not they don't agree. The check number, as shown here, and the number on the EOP do not reconcile.

Ms. SOLLER. What does the allottee say to that?

Mr. SOUTHWICK. Well, I guess he goes back to BIA and says, "What's going on here?" And they send him back through the circle of hands.

Ms. SOLLER. Now, did you look through the Deckers' explanation of payment forms?

Mr. SOUTHWICK. Yes; I did from 1985 through, I believe, 1 of 1989.

Ms. SOLLER. And looking at forms like this, did you come up with questions?

Mr. SOUTHWICK. Yes, I did.

Ms. SOLLER. How many?

Mr. SOUTHWICK. Approximately 50.

Ms. SOLLER. Okay, if you would have a seat over there again.

Mr. SOUTHWICK. Thank you.

Ms. SOLLER. And of these 50 questions, what did they appear to be at first glance?

Mr. SOUTHWICK. When I first looked at them, they looked like they were underpayments to the royalty owners or improper allowance withholdings.

Ms. SOLLER. Can you tell what they are for sure by looking at these forms?

Mr. SOUTHWICK. Not at all.

Ms. SOLLER. What are some of the major problems, just very briefly, running through that you found that are of concern to you from these EOPs?

Mr. SOUTHWICK. Well, if you look back to the one that we were on, for example, at the unit value, the first unit value that is given is 89 cents. We drop down to the next payor, which is at the bottom of the page, and they give a unit value of $1.04. Those two wells are one-half mile apart, and yet the price difference between them is 15 cents. There are common purchasers on both wells. They are producing from the same formation.

Ms. SOLLER. Is 15 cents significant?

Mr. SOUTHWICK. Well, when you're producing 42 million cubic feet of gas a month, it is.

Senator DECONCINI. Excuse me. Does that have anything to do with new gas or old gas?

Mr. SOUTHWICK. Not at all; no, sir.

Senator DECONCINI. It has nothing to do with regulation——

Mr. SOUTHWICK. This is the spot market price now.

Senator DECONCINI. The spot market price? So there's no rationale for that variance?

Mr. SOUTHWICK. Not at all.

Ms. SOLLER. Other than the differences in price fluctuation, what about royalty rate fluctuations? We've already talked about those; right?

Mr. SOUTHWICK. We talked about that; correct.

Ms. SOLLER. And we talked about allowances and the totals of checks and tardiness. Are those the main problems you see?

Mr. SOUTHWICK. As far as I'm concerned, yes.

Ms. SOLLER. I'd like to turn your attention away from the EOP for a minute to another issue dealing with price fluctuations. In your analysis of some of the oil and gas issues facing Oklahoma allottees, did you find some other price fluctuation issues that were of concern to you?

Mr. SOUTHWICK. Yes, I did.

Ms. SOLLER. And what was that?

Mr. SOUTHWICK. Well, one of the named plaintiffs in the lawsuit was involved in a well out in western Oklahoma that was subject to an old gas contract, and the old gas contract provided that these people would be paid 20 cents a thousand.

Ms. SOLLER. I'm sorry, Mr. Southwick, you were talking about these were old gas contracts?

Mr. SOUTHWICK. That's correct, signed back in the early sixties, covering four or five counties with a major gas purchaser in the State of Oklahoma.

I've heard many complaints from other independent operators in the State of Oklahoma that they were tied to these old gas contracts. Fortunately, the Indian oil and gas lease has some relief clauses in them such as a major portion analysis which demands that the higher price be paid for a major portion in the field.

Also, there's a clause in the oil and gas lease that allows the Indian lessor to take his production in kind. So he could opt out, sell his gas at a higher market price.

Ms. SOLLER. By that, you mean if he had a 20-percent royalty and there were 100 MCFs of gas being produced, he might be able to take 20 percent of that or 100——

Mr. SOUTHWICK. That's correct.

Ms. SOLLER [continuing]. Actually as the gas and then sell it?

Mr. SOUTHWICK. That's correct.

Ms. SOLLER. Okay. What was the gas price that was in the contract in this lease you examined?

Mr. SOUTHWICK. It started off at 15 cents, escalated to a final of 20 cents, and that's where it's at right now.

Ms. SOLLER. And what was the market price during that time?

Mr. SOUTHWICK. Well, the market price fluctuated from 1973 to 1988 anywhere from 21.5 cents in 1973 to $2.66, I believe, in 1984.

Ms. SOLLER. The chart that we've just put up——

Mr. SOUTHWICK. Yes.

Ms. SOLLER [continuing]. The line on the bottom is the contract price?

Mr. SOUTHWICK. That's correct.

Ms. SOLLER. And the line that goes up and down, that is what the market was doing?

Mr. SOUTHWICK. That's correct.

Ms. SOLLER. And what was the royalty being paid on?

Mr. SOUTHWICK. What was the royalty that was being paid?

Ms. SOLLER. What was it being paid on, the fluctuating line?

Mr. SOUTHWICK. The contract price.

Ms. SOLLER. The flat line?

Mr. SOUTHWICK. The flat line all the way across.

Ms. SOLLER. If the royalty——

Senator DECONCINI. Is that part of the lease agreement?

Ms. SOLLER. The lease agreement calls for 20 percent of what?

Mr. SOUTHWICK. The major portion analysis would dictate the highest the gas sold in the field. So that would be the value——

Ms. SOLLER. What about the contract price, though?

Mr. SOUTHWICK. Well, it could be even higher. For a while it was higher than the contract price. It was the NGPA price. But just for an example, we used the average national wellhead price in the United States to show how disparate the contract price and the market price were, but the lease says that, whatever they submit in terms of royalty is deemed as mere evidence of what the value of the Indian royalties are, and that it's the Secretary's discretion

to determine if that's sufficient or to make them do major portion analysis.

Mr. BALLEN. In fact, under the NTL–5 Act, they're supposed to be doing major portion analysis, and they weren't doing it, and this is the result. Is that correct, Mr. Southwick?

Mr. SOUTHWICK. That's absolutely correct.

Mr. BALLEN. Which is what Mr. Fetterolf testified to yesterday in terms of this major portion analysis, and here's an example on a lease of what happens when the law isn't followed; correct?

Mr. SOUTHWICK. That's correct.

Ms. SOLLER. In this lease what did it mean to these allottees?

Mr. SOUTHWICK. They were under paid by $1,750,000.

Ms. SOLLER. What does that mean a month?

Mr. SOUTHWICK. In the last five years the three allottee tracts under this well were under paid an average of $5,000 per month per allottee or $15,000 a month for the well.

Ms. SOLLER. Now can you tell from your analysis of this case whether or not there was, even putting aside major portion analysis, was there any attempt made to try and work with the allottees to work out some way of taking the gas in kind?

Mr. SOUTHWICK. Never.

Ms. SOLLER. In your opinion from your experience in the field, do you think that trying to set up something to get a company to buy the gas in kind in this circumstance might be feasible?

Mr. SOUTHWICK. I know people in the oil business that would have given valuable body parts to have had that contract in their clause.

Ms. SOLLER. Was this an isolated case?

Mr. SOUTHWICK. No, not at all.

Ms. SOLLER. How do you know that?

Mr. SOUTHWICK. Well, we had a—I was helping out Native American Rights Funds and Oklahoma Indian Legal Services on a class action suit that had evolved and that Mr. Moore referred to earlier called *Kauley v. U.S.* We subpoenaed one of the gas purchasers, information on, I believe it was, 17 other wells besides the Sankey wells that we have here. Of those 17, we found 8 more underpaid. Those eight aggregate underpayments for those particular wells were around $1.8 million, I believe.

In the 10 wells we've probably got underpayments of about $3.5 million.

Ms. SOLLER. Over what period?

Mr. SOUTHWICK. From 1973 through June of 1988.

Ms. SOLLER. Did you find any others?

Mr. SOUTHWICK. Yes, I did. I received a copy of a financial report, financial distribution report, that MMS publishes monthly and distributes to all their agency offices. By leafing through it, I found in just the Concho agency alone an additional 55 wells that were underpaid. Their payments were less than under $1. The prices ranged anywhere from 20 cents to I think 95 cents.

Ms. SOLLER. The well involved in this case, was it ever audited?

Mr. SOUTHWICK. Yes, it was audited twice.

Ms. SOLLER. By whom?

Mr. SOUTHWICK. By MMS.

Ms. SOLLER. What about this price?

Mr. SOUTHWICK. Well, they looked at the price and thought it was fine.

Senator DECONCINI. Was that a desk audit?

Mr. SOUTHWICK. No, sir, that was a full-blown field audit.

Senator DECONCINI. A field audit?

Mr. SOUTHWICK. Yes, sir. They went to the company's office and reviewed their books, looked at the gas contracts. They——

Senator DECONCINI. They would have known all of this; right?

Mr. SOUTHWICK. I would hope so. Maybe—I don't know. I would hope that they would.

Ms. SOLLER. When was the audit? When were the audits?

Mr. SOUTHWICK. I think one was done in 1982 and the other one was done after the initiation of the litigation in 1984. So I think the report on it was in July, June or July of 1985.

Mr. BALLEN. What company is on this, Mr. Southwick?

Mr. SOUTHWICK. The working interest owner? Sun Oil Company.

Ms. SOLLER. Well, why don't the allottees just go out and audit on their own?

Mr. SOUTHWICK. The law does not provide them the opportunity to do that.

Ms. SOLLER. Well, tribes can do it; why can't allottees?

Mr. SOUTHWICK. Well, we've tried and the people that we tried to get the information from said that we didn't have the power under the existing law to do it. So we're left—we can't get any records from the oil company. They tell us to go to MMS. MMS won't release the records. So we have to depend on MMS solely to perform the audits. From what I've seen, I have some problems with their auditing procedures.

Ms. SOLLER. Well, the audits that you've examined, there were some recoveries by MMS?

Mr. SOUTHWICK. That's true.

Ms. SOLLER. In Oklahoma; right?

Mr. SOUTHWICK. That's true.

Ms. SOLLER. When were these audits done?

Mr. SOUTHWICK. They were done, coincidentally, right after the litigation was filed. Audits were performed on the three plaintiffs in the lawsuit. The three plaintiffs own between them an interest in 10 different wells.

Not only did the MMS audit their particular properties, but they also audited the properties of seven other allottees that weren't involved in the lawsuit.

Ms. SOLLER. And after these findings, could you tell whether or not MMS went out and revised its audit themes in some way to pick up more in Oklahoma?

Mr. SOUTHWICK. No; they had significant, in my opinion, what I considered to be significant audit findings. They found $162,000 in underpaid or unpaid royalties, or taxes that were improperly held. They did, I think, assess some penalties and interest and that's included in that figure.

But that broke down to about $9,500 a lease for the 17 leases that they audited. So, to me, that was a significant amount, sufficient enough to encourage them to expand the scope of their audit to go out and look at other Indian leases, because it seemed to be a permeating factor in every lease that they looked at.

Ms. SOLLER. Mr. Southwick, you've submitted an extensive statement that includes this and some other areas. Would you like to make that statement a part of the record at this time?

Mr. SOUTHWICK. Yes, I would.

[Prepared statement of Mr. Southwick appears in appendix.]

Senator DECONCINI. I want to comment. I started to read that statement this morning and it's very comprehensive. I appreciate the time that you've put into it. It will appear in the record.

Mr. SOUTHWICK. Well, thank you. Thank you, sir.

Ms. SOLLER. Mr. Binder, I would like to turn to you for a minute. What is your experience?

Mr. BINDER. I have a bachelor's degree in engineering from Tufts University, a master's degree in business administration from Cornell. I'm a registered professional engineer and registered land surveyor with the State of Colorado.

I am principal officer with a data processing consulting firm Digital Design Group Incorporated, located in Denver, Colorado, and have about 22 years of data processing experience. A lot of that is in systems dealing with land and minerals.

I was the project manager and chief designer on the Colorado Oil and Gas Information Management System which is used by the Colorado Department of Natural Resources, the Colorado State Board of Land Commissioners, and the Colorado Oil and Gas Conservation Commission. That system was granted an exemplary system in government award in 1986 by the Urban and Regional Information Systems Association located here in Washington, DC.

I'm working now with the State of North Dakota to develop a system to keep track of 2.5 million mineral acres in the Willston Basin. I'm also a consultant to the State of Oklahoma and to the State of Nebraska Oil and Gas Commission.

Ms. SOLLER. You've also submitted a statement. Would you like to make that part of the record at this time?

Mr. BINDER. Ms. Soller, It's in draft form so I decline the offer.

Ms. SOLLER. Now then what are some fundamental functions that you believe any royalty accounting system should perform?

Mr. BINDER. Well, royalty accounting is not all that complex and magical. There are a couple important factors in calculating what a proper royalty should be. It's the volume of oil or gas that's been removed from the well; the unit price, just like buying gasoline from a pump, so many dollars per gallon except in this case it's so many dollars per barrel or so many dollars per thousand cubic feet of gas. The royalty rate, of course has to be correct, the royalty rate used in the lease, the percent participation of the lease in the drilling unit.

You want to make sure that allowances and deductions were not unreasonable; in this case of Indian lands, that they were not allowances that were not previously approved. You want to make sure that State severance taxes and conservation commission taxes and gross production taxes were not deducted where they should not have been deducted. You want to make sure that the mathematics used by the royalty payor in calculating the royalty was correct.

So any basic system should check all of those five or six factors when the reports are submitted and reviewed by MMS.

Ms. SOLLER. Now the MMS system will determine or verify volume under the PAAS system, but, to your information, is that system fully operational when it comes to Indian leases?

Mr. BINDER. No, it's not. I read through the legislative history of FOGRMA, and in that history written in 1982 it said that PAAS would be on line by the end of 1984. In several other reports, in the Linowes Commission report it said the PAAS system would be on line by 1984, and various reports prepared by Minerals Management Service back in 1982 it said would be on line by 1984.

Then the schedule slipped and it was supposed to be on line by 1986. Well, now it's 1989 and Oklahoma, for example, is not on the PAAS system. Oklahoma is supposed to come on line in October of this year, but it is still not on line after 5 years past the date that it should have been up and going.

Ms. SOLLER. Now the MMS royalty accounting system does not perform verification of the validity of prices, does it?

Mr. BINDER. From what I've heard before, the testimony before this committee, no, it does not.

Ms. SOLLER. That's what Mr. Norman testified about yesterday.

Mr. BINDER. That's correct. And from looking at the reports that Mr. Southwick has shown, it's apparent that they are not verifying unit prices.

Ms. SOLLER. Can a system be devised that will accomplish this?

Mr. BINDER. Yes.

Ms. SOLLER. How do you know that?

Mr. BINDER. Well, we've done it in Colorado.

Ms. SOLLER. And can the system detect prices for oil and gas that varies significantly from some average or acceptable price?

Mr. BINDER. Well, in Colorado what we do is we have, based upon other information reported to the State, the average unit prices per quarter for all oil and gas fields in the State, average unit price for oil, average unit price for gas. Those are prices paid for all leases whether they're private, Federal, Indian, or State.

What we do is we take the State price and compare it to the average price and prepare a variance report which shows the discrepancy. Any State leases which are paid significantly less than the average price are flagged to be reviewed by an individual auditor.

Ms. SOLLER. Now we've heard that the MMS royalty system—excuse me, the MMS accounting system does check for royalty rates, but that it's only a warning error and they don't automatically bill for this. Could a system be set up so that the money would pass through but a bill could go out later automatically for a variance in the royalty rate?

Mr. BINDER. One of the statements I've heard a lot from MMS is, "We don't want to check for these things up front because we don't want to hold payments." My feeling, the way we design systems, as long as you have enough information to distribute the monies, yes, distribute them at that time; don't hold up the payment, but make sure that some individual looks into that and, if it is shown that there is an incorrect royalty rate, to go after the additional monies that are due.

What our systems do, because royalty rate is such a simple thing to check, the royalty rate is stated in the lease at the time the lease is issued. It never varies. We compare the royalty rate report-

ed in the royalty remittance advice with the rate stated in the lease, and if there is discrepancy, the system automatically writes a letter which is stuffed into a window envelope to the payor telling them that they used the wrong royalty rate—very simple, very straightforward.

Ms. SOLLER. The same thing could be done for math errors; is that right?

Mr. BINDER. Absolutely.

Ms. SOLLER. Okay. And something could also be set up to catch if there was an improper tax deduction made and automatically bill for that?

Mr. BINDER. Yes, ma'am.

Ms. SOLLER. Okay.

Mr. BINDER. And, again, these are very simple data processing operations.

In the North Dakota system we are asking for a tax that's been deducted. Now you would think when designing a system for the State that since taxes are not going to be deducted, you wouldn't have to include that field, but we know that people do deduct it and it's reported on standard reports that go out to private royalty interest owners. So if the company is deducting a tax, let them state it and then you know it's being deducted and shouldn't be deducted; then you go after it.

Ms. SOLLER. Now what we have been talking about are what are often called front-end audits or front-end edits; is that right?

Mr. BINDER. Yes, ma'am.

Ms. SOLLER. And, in your opinion, does MMS perform adequately on their front-end edits?

Mr. BINDER. No, from the testimony I've heard, they take the money in, and I've heard people at MMS say it, "It's an accounting system; it's not an auditing system. We're concerned with getting the money in and getting the money out."

Ms. SOLLER. Well, if front-end edits or audits are not performed, are field audits adequate to verify that all royalties are eventually paid?

Mr. BINDER. Not in my opinion.

Ms. SOLLER. Why?

Mr. BINDER. Well, from what we heard from the auditor from the Northern Ute Tribe, only a very small percentage of his leases were being audited. I believe he stated that approximately three leases were being audited out of their lease universe of approximately one hundred and forty.

Now that might be a good representative sample of the accounting practices and procedures in accounting systems of the payors, but, unfortunately, it won't catch unsystematic, random errors and blunders that are made by payors. In order to catch those, you have to look at every single royalty remittance advice that comes in.

There are a couple of other things wrong with waiting for a field audit.

Ms. SOLLER. What else?

Mr. BINDER. The time lag, for example. A couple of months ago MMS said they were doing six-year audits; now they've brought it down to three- and five-year audits. But even a three-year audit

won't be completed until four or five years after the royalty had been paid. In four or five years a lot can take place. The payor company may have changed hands. They may have lost their records. They may have gone bankrupt.

It's easier and simpler to audit to find the problems and have them corrected contemporaneously with when the reports are submitted.

Yet, there is still another problem. If somebody is making a mistake, if they're using the wrong royalty rate, you want to let them know as quickly as possible so they won't continue to be making that same mistake for the next three years until a field audit is performed.

Ms. SOLLER. If a field audit is performed, it's generally done, as you mentioned, on representative sample leases or on representative months; right?

Mr. BINDER. That's correct.

Ms. SOLLER. And if there are audit problems or findings made about a company's practices that show up in those months, the company is told to correct it over time or over its whole universe; right?

Mr. BINDER. That's what Mr. Fetterolf said, yes; they were supposed to self-audit and correct those problems throughout all their leases.

Ms. SOLLER. And you heard Mr. Fetterolf yesterday say that the companies are saying they're not doing it?

Mr. BINDER. That's what I heard him say, yes.

Ms. SOLLER. Is that, in your opinion, also a problem with relying completely on field audits?

Mr. BINDER. Well, if, in fact, the companies are not self-auditing and correcting all the problems for all their leases, the payors, and if MMS is not prepared to field audit all of the reports that are submitted, then, no, it's not adequate to protect the interests of the Indian allottees.

Ms. SOLLER. I just want to go to one specific problem right now, the problem of recoupments from prior months. Does the system right now, do you think, adequately make sure that there is not an over-recoupment occurring by a company?

Mr. BINDER. Well, one of the report lines on the EOP statement, the exhibit that Mr. Southwick was using shows a recoupment from a month in which there were not adequate payments originally made to cover that recoupment.

Let me state it a little differently. A company could have said, "We paid $1,000 in royalties for January of last year," and then they can come back with an adjusted report and say, "Well, it shouldn't have been $1,000; it should have only been $500 and we want to apply that $500 to a new lease in this reporting period."

Well, their system does not check to make sure that original $1,000 was originally paid. It's apparent that they're not doing it on current royalty reports, and it's impossible, from what I heard their people say, to do it on reports that are older than six months because they've told me that they only keep 6 months' worth of data on line in the system.

So that a payor, mistakenly, could use money, apply money that was never paid in the past period to current royalty obligations.

Ms. SOLLER. Or it could back out a charge or take out an adjustment several times?

Mr. BINDER. I've heard that's been caught. That has, in fact, happened. MMS does not systematically check for those types of discrepancies.

In my mind, that's such a basic standard accounting function, it's generally accepted practice when you want to apply a credit from a period, a prior period, and make sure that payment was, in fact, made and received.

Ms. SOLLER. Some State systems are checking for this; is that right?

Mr. BINDER. Yes. We're keeping at least three years' worth of past royalty data on our systems because we know that significant adjustments in prior periods, prior period adjustments take place in at least the first two years.

Ms. SOLLER. Now I want to turn to something that Mr. Moore talked about earlier, and that's the development of a new system that would separately handle allottee matters to some degree. Is such a system feasible?

Mr. BINDER. I'd rather talk about some of the benefits and some of the problems with doing something like that. I think there are a lot of benefits. Obviously, it's feasible because States and tribes have been developing their own accounting systems for a fraction of the money that MMS has spent on their system.

The MMS system is very big; it's very complex. There has been, from what I've heard, over $100 million spent on the design and development of that system. It was primarily designed to handle offshore outer continental shelf leases which have a lot of complexities and a lot of intricacies that don't apply to Indian allottee leases. Indian allottees and tribes do not own offshore properties.

So there are a lot of things in the MMS system that are excess baggage with respect to accounting for Indian royalties. On the other hand, Indian allottees have needs that don't occur when you're dealing with Federal royalties. They have to have good explanation of payments. They have to have a system that's readily available to provide information to people in the field, people in the BIA offices.

Senator DECONCINI. Mr. Binder——

Mr. BINDER. Yes, sir.

Senator DECONCINI [continuing]. To set up an alternative or a separate accounting system, auditing system—excuse me—for Indian land, would that be excessive cost or can you give us any idea? Are we talking about a tremendous cost involvement to have something different than what MMS uses across the board?

Mr. BINDER. Senator, I can tell you what the various States have spent on the development of their systems.

Senator DECONCINI. Yes.

Mr. BINDER. For example, the Colorado system, which does alot more than MMS is doing. It keeps track of all the lands that are owned by the State. That's 4 million acres of mineral rights. It keeps track of every single well for their own gas commission that is drilled in the State. There are now over 22,000 oil wells with all the completion reports and all the technical information about those wells on the system.

It keeps track of all the oil and gas production in the State, whether it's on State lands, Federal lands, Indian lands, or private lands. It keeps track of all the royalties and all the leasing functions.

That system, hardware and software, was $542,906—$542,000.

Senator DECONCINI. Yes. So, without being precise, but for a system that has royalties of $125 million and I don't know how many Indian leases we have, but it is not incomprehensible that, No. 1, a system could be created for that——

Mr. BINDER. Yes.

Senator DECONCINI [continuing]. Carved out of the MMS system now, nor that it would be millions, many millions of dollars or anything like that?

Mr. BINDER. No.

Senator DECONCINI. Is that a fair estimate?

Mr. BINDER. Yes, sir. The Federal system, from what I'm able to obtain—if the agency is properly managed, they should be able to provide you fiscal year by fiscal year how much money was spent on design, how much money was spent on development, how much money was spent on hardware, how much money was spent on operations.

I have not been able to obtain information of that type from that agency.

Senator DECONCINI. Thank you.

Ms. SOLLER. Mr. Binder, just one last question: if you were to develop a system, how much input do you think would be needed with the end users, the people who are actually going to use the system, the allottees?

Mr. BINDER. That's absolutely crucial. It's very important that any computer system meets the needs of the users. The only way to determine what those needs are is to sit down and talk with the people that will be receiving EOPs, for example.

I believe it was Eddie Jacobs yesterday who testified that, if I'm not mistaken, that nobody from MMS had ever spoken with him about what he would like to see in the systems. No one had spoken with allottees about what their unique requirements are.

One of the first things that any good systems designer does is talk to the users and involve them in the design process throughout the development of the system. It's much easier to do it right the first time than to develop a system, have people start seeing what comes out of it, and then realize that it's not what they want to see, and try to make the changes.

Ms. SOLLER. Thank you, Mr. Binder.

Mr. BINDER. Thank you.

Senator DECONCINI. Thank you very much, both of the witnesses. We appreciate that testimony. It is very, very helpful to us.

Mr. BINDER. Thank you, sir.

Senator DECONCINI. We will continue with Mr. Vern Ingraham, Director, Office of External Affairs, Minerals Management Service.

Mr. Ingraham, would you please come forward and raise your right hand?

[Witness sworn.]

Senator DECONCINI. Please be seated.

Ms. Soller?

Ms. SOLLER. Thank you.

STATEMENT OF VERN INGRAHAM, DIRECTOR, OFFICE OF EXTERNAL AFFAIRS, MINERALS MANAGEMENT SERVICE

Ms. SOLLER. Mr. Ingraham, you're the Director of the Office of External Affairs; is that right?

Mr. INGRAHAM. That's correct.

Ms. SOLLER. What is the mission of the Office of External Affairs, the purpose?

Mr. INGRAHAM. The primary purpose of OEA, the External Affairs Office, is to provide outreach and communication with Indian allottees. We perform desk reviews, the result of the audit process under the BIA/MMS Indian lease audit strategy. We also provide logistical and administrative support to the Royalty Management Advisory Committee.

Ms. SOLLER. How many people are on your staff?

Mr. INGRAHAM. Three professional staff and one secretary.

Ms. SOLLER. And this is the office that MMS—and correct me if I am wrong, but is this the office that MMS sees as being virtually solely responsible for outreach to allottees?

Mr. INGRAHAM. To allottees, yes, that is correct.

Ms. SOLLER. And do you believe that with three people you can adequately do the job of covering the entire allottee lease universe?

Mr. INGRAHAM. We have had many, many meetings with the Oklahoma Indian Mineral Owners Association and dealing with the allottees in Oklahoma. No, we cannot provide that kind of service to allottees in other areas of the country to be at that level.

Ms. SOLLER. So if you're already booked solid with just what you're doing in Oklahoma and if your office is supposed to be the outreach to allottees, what about the allottees through the rest of the country? Do they have any other recourse or any other input other than you?

Mr. INGRAHAM. Our office is the primary office for BIA or the individuals to contact.

Ms. SOLLER. Now I want to turn to the desk review process or the process of answering questions, if I could, for a minute.

Mr. INGRAHAM. Sure.

Ms. SOLLER. Mr. Young testified earlier that, as he understands it from the BIA, the process is that the allottee is supposed to contact his agency which is supposed to go up through the chain of command at the BIA until it comes to you; is that correct?

Mr. INGRAHAM. That's the way the procedure is defined.

Ms. SOLLER. Were you present when the Deckers testified earlier?

Mr. INGRAHAM. No, I wasn't.

Ms. SOLLER. Are you familiar, though, with the fact that in the case of Houston Decker that he went to his BIA representative and was told, "We can't answer the questions having to do with the EOP. Go to MMS."?

Mr. INGRAHAM. I'm familiar with that from discussions with you and contact yesterday with the Anadarko office.

Ms. SOLLER. Is that what's supposed to happen?

Mr. INGRAHAM. That is not what is supposed to happen, no, ma'am.

Ms. SOLLER. And after, in fact, the Deckers wrote to you, you mentioned back that, in fact, the BIA had gone outside their chain and that they were supposed to answer the questions?

Mr. INGRAHAM. We returned the correspondence to the Anadarko agency office and requested that they look at the matter and, if they could not respond, to provide us the request under the procedures that are defined.

Ms. SOLLER. And they never did?

Mr. INGRAHAM. They have not done that to date.

We require additional information from the BIA in addition to just the individual's request. We have not gotten that information yet, but I have been told this morning that they are in the process today of providing that to us.

Ms. SOLLER. And that's because you called to check on it; right?

Mr. INGRAHAM. Yes, I spoke with the area director yesterday.

Ms. SOLLER. And if you hadn't done that, we have no idea when something might have happened in this case; is that right?

Mr. INGRAHAM. I would agree with you.

Ms. SOLLER. This is 1989, long after the system is supposed to be in place, and this finger pointing back and forth is still going on; isn't that right?

Mr. INGRAHAM. I don't characterize it as finger pointing. I try to maintain a good working relationship with the employees in the BIA. So I wouldn't want to characterize it that way.

Ms. SOLLER. But people are still being sent back and forth from one office to another, as is demonstrated by the Decker case, at least in some circumstances?

Mr. INGRAHAM. In some circumstances, I would agree, that has happened.

Ms. SOLLER. And this is at Anadarko even after they have been trained down there on how to fully implement this process; isn't that right?

Mr. INGRAHAM. We have worked closely with the Anadarko people over the last three years. We have received many requests from them. We have had a good working relationship with them. Some of these things are falling through the cracks, though.

Ms. SOLLER. Now going to the desk audit process, this is a process in which, if you get a question, you go first to the desk audit before a full-blown audit is called for; is that right?

Mr. INGRAHAM. Generally speaking, we will do a desk review. We don't term it an "audit," but it's an accounting review of the records that we have in our system. We generally do a production sales comparison as well.

Ms. SOLLER. But you don't check any company source documents; is that right?

Mr. INGRAHAM. No. That's correct.

Ms. SOLLER. And you don't check whether or not the value that's used by the company is the correct value?

Mr. INGRAHAM. No, we don't have that information. Generally speaking, if we do a desk review and we note that the values appear to be fluctuating, we would ask our royalty valuation divi-

sion to look at that. In some cases we have followed up with our audit division on those matters.

Ms. SOLLER. And many of the things that you find wrong are errors that could be caught just by examinations of the company's records? In fact, all of the ones you've looked at are caught by examinations of the records, a close examination of the records that the company submits to MMS; isn't that right?

Mr. INGRAHAM. No, I wouldn't agree with that. I would agree that some of them are, but many of the questions that we get from allottees deal with other than just those issues that we do desk reviews on. So I couldn't say that across the board the type of desk review work we are doing could be done by the audit division in audits at the company's site.

Ms. SOLLER. But what you do when you check the material that's submitted by the company is, in essence, kind of a delayed front-end edit system; isn't it?

Mr. INGRAHAM. In some respects, I guess you could say that. For example, when you're looking at royalty rates and verifying calculations on royalty rates, just as we've seen here this morning, we do evaluate for those royalties in our desk reviews and in some cases we find that the company did report a lower royalty rate than they should have; in other cases we'll find that, because of the roll-up process where you're netting lines together, that causes a distorted rate.

Ms. SOLLER. But I'm talking about the recoveries that you've made, just those. Those were based on your doing these, in essence, delayed front-end edits?

Mr. INGRAHAM. These desk reviews.

Ms. SOLLER. Right. And you haven't come close to touching the universe of allottee audits, edits?

Mr. INGRAHAM. No, ma'am.

Ms. SOLLER. And already we've heard that in the case of one case, the Curry and Jones audit, that one has taken 13 months since it was referred to even be reached; isn't that right?

Mr. INGRAHAM. Since that request was received the latter part of July.

Ms. SOLLER. I want to talk for a minute about these EOPs and about what does and doesn't show up on them.

Mr. INGRAHAM. Okay.

Ms. SOLLER. By looking at these, you can't tell exactly in many cases what the lease royalty rate is, can you?

Mr. INGRAHAM. No, you cannot. The contract rate, you cannot.

Ms. SOLLER. And if the ownership interest column varies, you can't tell why, can you?

Mr. INGRAHAM. No, this is a BIA report and that information is in the BIA computer system.

Ms. SOLLER. And if you multiply—if you go across on one of the lines and multiply the value times—excuse me, the volume times the unit value times the royalty rate, times the ownership interest, and you don't get the total, can you tell why?

Mr. INGRAHAM. Not on the surface, no.

Ms. SOLLER. Can you tell why adjustments are made?

Mr. INGRAHAM. No, you cannot.

Ms. SOLLER. Can you tell if taxes are deducted?

Mr. INGRAHAM. Not on that form.

Ms. SOLLER. Can you tell if interest for late payments has been assessed?

Mr. INGRAHAM. Not on that form.

Ms. SOLLER. Can you tell why the check amount and the explanation of payment amounts are different?

Mr. INGRAHAM. You can tell why that's different, but the check amounts that are on the bottom of the form, as I understand, are for perhaps oil and gas payments and non-oil and gas activities which may be grazing, timber, whatever, whatever checks are coming out of the BIA system.

Ms. SOLLER. So sometimes you'll get a grazing check on a form that is entitled "Statement of Oil and Gas Receipts and Disbursements"?

Mr. INGRAHAM. That's correct.

Ms. SOLLER. And you can't tell for sure whether or not an audit payment is being made by a company?

Mr. INGRAHAM. No, you cannot.

Senator DECONCINI. Excuse me. Mr. Ingraham——

Mr. INGRAHAM. Yes, sir.

Senator DECONCINI [continuing]. Does MMS have any access to the BIA computer information here other than what this EOP gives you?

Mr. INGRAHAM. No, sir, we don't.

Senator DECONCINI. Is there any reason you couldn't have that? Do you have computer capacity now within MMS?

Mr. INGRAHAM. Well, I'm not the best person to respond to that, Senator. Mr.——

Senator DECONCINI. Would you—excuse me, go ahead.

Mr. INGRAHAM. Mr. Williamson can respond to that this afternoon.

Senator DECONCINI. Okay. I won't be here this afternoon, so I will ask Ms. Soller to request that because I would like to know if there's any reason that that could not happen under your computer system or it could be adopted. I would suspect it would be.

Let me ask a few questions——

Ms. SOLLER. Certainly.

Senator DECONCINI [continuing]. And then I'll come back to you.

Is there any reason you don't put in a special auditing system for Indian allottees? Has that ever been considered?

Mr. INGRAHAM. A special auditing system?

Senator DECONCINI. I mean of something other than—you do the auditing; is that right?

Mr. INGRAHAM. No, I do the desk reviews. We have an audit division——

Senator DECONCINI. The desk reviews?

Mr. INGRAHAM [continuing]. That does the auditing of the companies.

Senator DECONCINI. I've got the wrong person maybe, but MMS does the auditing and the desk reviews?

Mr. INGRAHAM. Yes.

Senator DECONCINI. Is that right?

Mr. INGRAHAM. Yes.

Senator DECONCINI. Do you know, has there been any discussion about setting up a separate auditing procedure for Indian allottees?

Mr. INGRAHAM. Not that I'm aware of. We have this special Indian audit procedures that we've agreed to with BIA for the referral process to take place.

Senator DECONCINI. That's just for the referrals?

Mr. INGRAHAM. Right.

Senator DECONCINI. But that isn't any different auditing procedures——

Mr. INGRAHAM. No.

Senator DECONCINI [continuing]. To your knowledge than is followed by everybody else?

Mr. INGRAHAM. That's correct. In some cases, those referrals would go to audit and they would assign those cases to an audit team; in other cases they may wait until they do a payor company audit and do the audit at that time.

Senator DECONCINI. Do you know who usually brings about the audit? Who gets you to do the desk audit?

Mr. INGRAHAM. Generally, the allottees through the BIA.

Senator DECONCINI. Do you do any random desk audits?

Mr. INGRAHAM. No, we do not.

Senator DECONCINI. Is it a policy not to?

Mr. INGRAHAM. I don't think it's a policy not to; I think it's a matter of resource constraint.

Senator DECONCINI. If you had resources, would you think that that would be a wise thing to do?

Mr. INGRAHAM. That would—yes, I would.

Senator DECONCINI. You would?

Mr. INGRAHAM. Yes.

Senator DECONCINI. Just out of good——

Mr. INGRAHAM. That's my opinion.

Senator DECONCINI [continuing]. Good accounting practices?

Mr. INGRAHAM. Sure.

Senator DECONCINI. And in——

Mr. INGRAHAM. Senator, may I just add to that, if I might?

Senator DECONCINI. Surely.

Mr. INGRAHAM. Mr. Williamson, I know, will be prepared to talk this afternoon about some system enhancements and improvements that are planned downstream for some of these editing processes to take place that you've been discussing today. So he might add to that and help you.

Senator DECONCINI. Yes, thank you.

Now you testify here some frustration yourself with the EOP that's presented here, the information that you don't have that you have to get from BIA if you want it. Have you or do you know if Mr. Williamson or anybody in MMS has made any proposals to make changes or done any reports or studies about this and passed it on to their superiors?

Mr. INGRAHAM. Within MMS, I'm not aware of anything like that. I know within the Bureau of Indian Affairs there's been a lot of criticism regarding these statements before, and that at one time they were going to undertake a project to redesign the form and I just don't——

Senator DECONCINI. Do you know when that was?

Mr. INGRAHAM. That was probably a year and a half, two years ago.

Senator DECONCINI. And nothing has come about, to your knowledge?

Mr. INGRAHAM. No.

Senator DECONCINI. Who is your immediate supervisor?

Mr. INGRAHAM. I work for Mr. Hill, the Associate Director for Royalty Management.

Senator DECONCINI. And who does he work for?

Mr. INGRAHAM. The Director, Mr. Williamson.

Senator DECONCINI. So Mr. Williamson's responds to the BLM Director; is that right?

Mr. INGRAHAM. No, Mr. Williamson, he reports to the Assistant Secretary.

Senator DECONCINI. The Assistant Secretary, who reports to the Secretary?

Mr. INGRAHAM. That's correct.

Senator DECONCINI. So down to you, who heads up the audits, there are at least five people in between—four people between you and the Secretary, maybe five?

Mr. INGRAHAM. Down to me who does the desk reviews; right.

Senator DECONCINI. Well, it's an unfair question to ask you, but I'm going to ask you anyway.

Mr. INGRAHAM. Okay.

Senator DECONCINI. And don't take it personally.

Mr. INGRAHAM. I won't.

Senator DECONCINI. What I do want to know is your personal opinion, based on what you think, Mr. Ingraham, a trust responsibility is. Do you feel that your part of MMS is meeting the trust responsibility to the Indian allottee?

Mr. INGRAHAM. I'm not sure what a definition of trust responsibility is. If I were to give you my own personal opinion, I don't think we could apply a cost-benefit type of criteria to it, from what I understand Congress has mandated in the past regarding trust responsibility to the Indians.

In terms of the level of service as we provide in that context, I would not think we would be meeting that.

Senator DECONCINI. So, based on the lack of resources and the capability within your shop, so to speak, it's your personal opinion that you probably do not meet that trust responsibility?

Mr. INGRAHAM. Yes.

Senator DECONCINI. Thank you. I have no further questions.

Ms. SOLLER. Mr. Ingraham, if you got a form like this for your interest that had lease royalty rates on it that didn't match your lease and negatives, what would you do?

Mr. INGRAHAM. I would make some inquiries, perhaps write some letters.

Ms. SOLLER. And if the response you got was go some place else or wait a while, what would your reaction be?

Mr. INGRAHAM. Probably very similar to Eddie Jacobs' reaction when he makes inquiries.

Ms. SOLLER. And if the final time from when you made the inquiries until you had a full audit was three or four years, as in the case of some—isn't that right?

Mr. INGRAHAM. That's correct.

Ms. SOLLER. What do you think your reaction would be then?

Mr. INGRAHAM. I would be very frustrated and upset.

Ms. SOLLER. And are these people getting any answers to these questions in between, do you know?

Mr. INGRAHAM. We're attempting to provide them, you know, a status of the work to the best of our ability. Sometimes that isn't satisfactory to them.

Ms. SOLLER. And that's not really meeting the trust responsibility, is it?

Mr. INGRAHAM. In terms of timeliness, I think we have to look at that seriously.

Ms. SOLLER. Senator, I have no further questions.

Senator DECONCINI. Thank you very much, Mr. Ingraham.

Mr. INGRAHAM. Thank you.

Senator DECONCINI. We appreciate your testimony.

The committee will stand in recess until 1:30 this afternoon when Senator McCain will chair the final session today, which will take between 30 and 40 minutes with Mr. Williamson.

Thank you.

[Whereupon, at 11:59 a.m., the committee recessed for lunch, to reconvene at 1:30 p.m. the same day.]

AFTERNOON SESSION—1:41 P.M.

Senator MCCAIN [acting chairman]. The Special Committee on Investigations of the Select Committee on Indian Affairs will come to order.

Our first afternoon panelist will be Barry Williamson, Director of the Minerals Management Service.

Will you come forward, please, and raise your right hand.

[Witness sworn.]

Senator MCCAIN. Please be seated.

Could you state for the record who will be accompanying you?

STATEMENT OF BARRY WILLIAMSON, DIRECTOR, MINERALS MANAGEMENT SERVICE, ACCOMPANIED BY JIMMY W. MAYBERRY, DEPUTY ASSOCIATE DIRECTOR; DONALD T. SANT, DEPUTY ASSOCIATE DIRECTOR FOR VALUATION AND AUDIT

Mr. WILLIAMSON. Yes, sir. To my right is Don Sant. He's in our realty office in Denver. To our left is Jimmy Mayberry, also in our realty office in Denver.

Senator MCCAIN. Thank you.

Mr. KLINGENSTEIN. Good morning, Mr. Williamson, Mr. Sant, Mr. Mayberry. Good afternoon, I suppose.

Mr. Williamson, will you state your full name, please?

Mr. WILLIAMSON. Yes. I'm Barry Williamson.

Mr. KLINGENSTEIN. And you were recently appointed Director of Minerals Management Service; is that correct?

Mr. WILLIAMSON. Secretary Lujan appointed me Director of the Minerals Management Service on April 3, 1989.

Mr. KLINGENSTEIN. So you've only been on the job a little more than a month?

Mr. WILLIAMSON. Six weeks.

Mr. KLINGENSTEIN. Prior to this job, sir, you served at the Department of Energy, Office of Policy and Planning; is that correct?

Mr. WILLIAMSON. Yes, I was the head of the Department of Policy Planning and Analysis at the Department of Energy.

Mr. KLINGENSTEIN. And you have some experience in the oil and gas industry; is that right?

Mr. WILLIAMSON. I was in the oil and gas business in Midland, Texas in 1985, 1986, 1987, and 1988.

Mr. KLINGENSTEIN. Mr. Williamson, yesterday the committee heard from Mr. Charles Norman, its accountant, and Mr. Randy Fetterolf, an oil and gas expert hired as a consultant by the committee.

Mr. Norman testified that MMS was clearly the best-run agency of the three agencies that are involved in the administration of natural resources. That judgment must be considered in light of the quality of the two other agencies, however, which is BLM and BIA, each of which has been severely criticized by this committee.

Mr. Norman also noted that MMS had made significant strides in a number of areas, including in the area of auditing in particular. That's the good news.

The bad news is that Mr. Norman reported MMS still has a long way to go and that there are serious deficiencies which remain. Let me turn now to some of those deficiencies that were identified by Mr. Norman.

First, Mr. Williamson, can you identify the major divisions in MMS?

Mr. WILLIAMSON. The major divisions on the realty side or the whole MMS program?

Mr. KLINGENSTEIN. In the entire program.

Mr. WILLIAMSON. We have two divisions primarily, the realty management program which is located in Lakewood, Colorado. The other part of our mission at MMS is the offshore OSC. The mission of that area is to manage and oversee the leasing and development of our offshore minerals; realty is to distribute onshore and offshore Federal minerals.

Mr. KLINGENSTEIN. But you have a royalty compliance department; is that correct?

Mr. WILLIAMSON. That is true, yes.

Mr. KLINGENSTEIN. And that department or division is set up to insure compliance through auditing and other means of enforcement; is that correct?

Mr. WILLIAMSON. That's the division within the realty management program, yes, sir. That's one of the two divisions.

Mr. KLINGENSTEIN. Okay. And another main division in that program is the fiscal accounting division which accounts for——

Mr. WILLIAMSON. Yes, sir.

Mr. KLINGENSTEIN [continuing]. And distributes the royalty payments——

Mr. WILLIAMSON. Yes, sir.

Mr. KLINGENSTEIN [continuing]. Is that correct?

Mr. WILLIAMSON. Jimmy Mayberry runs the realty accounting division and Don Sant runs the realty compliance division.

Mr. KLINGENSTEIN. Let me start first with the fiscal accounting division. Mr. Norman indicated that your fiscal accounting division

has serious limitations and that, unlike the IRS system, it is incapable of flagging for prime audit candidates. In other words, it cannot look at a submission made by the company and make a determination on the basis of that submission that this is a company or lease that should be audited as particularly suspect or as a particularly prime source of underpayment.

In particular, he noted that your data processing system is incapable of identifying problems in valuation; is that correct?

Mr. WILLIAMSON. That's correct.

Mr. KLINGENSTEIN. In addition, the system is incapable of identifying whether certain deductions or allowances have been improperly taken?

Mr. WILLIAMSON. The AFS system, yes.

Mr. KLINGENSTEIN. Okay. And these are deductions such as transportation deductions, manufacturing/processing deductions and the like?

Mr. WILLIAMSON. Processing gas—in the AFS system that's true.

Mr. KLINGENSTEIN. If improperly taken or excessive in amount, it would have the effect of lowering the basis on which royalties are paid; is that right?

Mr. WILLIAMSON. That's true, too.

Mr. KLINGENSTEIN. And, as a result, the royalty payee, in this case an Indian interest owner, would get less royalties?

Mr. WILLIAMSON. Underpayment, yes.

Mr. KLINGENSTEIN. Now in the area of valuation, in particular the system is incapable of flagging situations in which companies have failed to use major portion analysis; is that right?

Mr. WILLIAMSON. I'm sorry, would you repeat that?

Mr. KLINGENSTEIN. The AFS system is incapable of identifying——

Mr. WILLIAMSON. At this point the AFS system does not account for the major portion analysis, does not monitor that.

Mr. KLINGENSTEIN. Okay. Again, if major portion analysis is not performed, there is a risk that the true value of the product is understated, thereby understating the amount of royalties due; is that right?

Mr. WILLIAMSON. In that system, yes.

Mr. BALLEN. That's a system you use, Mr. Williamson, to process the royalty checks and the forms coming in that's called the AFS system?

Mr. WILLIAMSON. The AFS system primarily is to collect, account for, verify, and disperse royalties. It's a three-part system. That's only one part of the system, but that's true, sir.

Mr. KLINGENSTEIN. And, in addition, Mr. Williamson, that AFS system may be incapable of catching simple arithmetical errors; is that correct?

Mr. WILLIAMSON. It does do mathematical computations. If the information is put into the machine, it will compute the math.

Mr. KLINGENSTEIN. Mr. Williamson——

Mr. WILLIAMSON. Excuse me—but only as reported on the form. In other words, if the form, if the information on the form is not correctly calculated, in other words, there's a miscalculation as to the information on that form, not to the validity of the information

but just to the information reported, it will do that computation, but it will not distinguish between the validity of the information.

Mr. KLINGENSTEIN. Mr. Williamson, we were told in depositions with staff that MMS did not know whether these arithmetical errors could be caught, at least in certain circumstances.

Mr. WILLIAMSON. That goes to the information, the validity of the information put on the form. I'm just talking about multiplying and subtracting information that's already on the form. That's my understanding.

Mr. KLINGENSTEIN. Okay. That point had not been made clear earlier.

Let me ask whether one of the deductions that the system is incapable of flagging is the deduction for State production taxes; is that correct?

Mr. WILLIAMSON. Severance taxes. Yes, at this point it does not monitor State severance tax. One of the plans for improving the system in the 1991-92 time frame is to add the severance taxes to our exception processing which is a back part of the system, of the AFS system.

Mr. KLINGENSTEIN. They are severance taxes, ad valorem taxes, and other taxes——

Mr. WILLIAMSON. That's correct.

Mr. KLINGENSTEIN [continuing]. On the Indian royalty?

Mr. WILLIAMSON. Yes, sir.

Mr. KLINGENSTEIN. And with the exception——

Mr. WILLIAMSON. It includes the Indian realty.

Mr. KLINGENSTEIN. With the exception of certain Oklahoma areas, these taxes may not be made on Indian royalties; is that correct?

Mr. WILLIAMSON. Most severance taxes are not allowed for Indian royalties; that's true.

Mr. KLINGENSTEIN. Now, Mr. Williamson, this committee was told that earlier last year MMS identified a problem in this area and wrote the companies telling them to go back and correct problems of improperly taking the State production taxes; is that correct?

Mr. WILLIAMSON. That's my understanding.

Mr. KLINGENSTEIN. And is it also correct that, as a result of this effort, MMS has collected some $220,000-odd?

Mr. WILLIAMSON. Two hundred and twenty thousand is the figure that was identified; that's correct.

Mr. KLINGENSTEIN. Has all that amount actually been collected?

Mr. WILLIAMSON. To my knowledge, all of that amount has not been collected. Some has been disputed.

Mr. KLINGENSTEIN. And does MMS have further plans to carry on with this project?

Mr. WILLIAMSON. Yes, we are in trying to resolve that dispute. In other words, it's in suspense, I guess, at this point.

Mr. MAYBERRY. The answer to the question is we are developing the special program routine which will be run hopefully later this month to determine which of the companies notified did, in fact, properly correct some 220,000 of identified deductions regarding severance tax.

Mr. KLINGENSTEIN. This committee heard testimony yesterday from Mr. Fetterolf who reported that the committee took sworn testimony of various oil and gas companies and identified in this area of improperly taken State production taxes a considerable amount of new money; that is, money in excess of the $221,000 that MMS had collected.

Is that a reflection of again another limitation of the AFS system?

Mr. WILLIAMSON. At this point the AFS system does not flag, as you mentioned, severance taxes, but we are in the process of putting that into our system in the 1991-92 time frame. However, that does not mean that we cannot go back—it's a three-part system. I think you have your AFS, your PAAS which is coming on, and your royalty compliance. They can be identified targets for audits and at that point we'll know when that severance tax has been deducted improperly.

Mr. KLINGENSTEIN. May I ask you, on this issue, in communications with the companies on the State production tax issue, MMS has stated that companies withholding taxes for Indian royalties can overcome the general presumption that this is improper if they show that such withholding was clearly authorized. I am wondering whether there are any occasions on which a company has tried to make that showing outside of the Oklahoma context.

Mr. WILLIAMSON. Jimmy Mayberry will speak to that issue.

Mr. MAYBERRY. That statement that you read from was put in the "Dear Payor" letter that placed industry on notice as to this problem. The citation specifically that you cited was simply to advise industry that there are some cases where severance taxes could be permissible and that we would review those case to case if they would advise and furnish information.

We, to my knowledge, have not received any request specifically in regard to that at this point.

Mr. KLINGENSTEIN. So there have been no cases where companies have asked you to overcome the presumption?

Mr. MAYBERRY. Not to my knowledge.

Mr. KLINGENSTEIN. Does MMS have other plans to adjust its AFS or computer system so that it can flag these problems up front rather than rely on its audit system to catch underpayment?

Mr. WILLIAMSON. Yes, there are several exception processes that we are currently looking at putting into the AFS system. Those are, as you mentioned, severance tax and audit responses to that, royalty rates, rent, minimum royalty, and also the transportation cost and the process allowances that you mentioned earlier. We're looking at the feasibility of that.

Also, another important thing that I might mention is production valuation. We're currently evaluating whether we can put that on the system. That would be a significant improvement.

Mr. KLINGENSTEIN. How would that work, product valuation?

Mr. WILLIAMSON. Let me ask one of my two gentlemen.

Mr. SANT. You would create a database field by field or area by area where you would put in what is a reasonable value for that area. Then you would compare what the payor reports when it pays royalties, the value it reports, and if it was too far out of line

to what you expected from that area, you would create an exception and send it over for further review.

Mr. KLINGENSTEIN. And what are your current plans for that system?

Mr. SANT. We are looking at the feasibility and how much it might cost to see if a database like that could be initially created and then maintained in a timely fashion.

Mr. KLINGENSTEIN. Have you estimated its cost?

Mr. SANT. No, we have not yet.

Mr. KLINGENSTEIN. When do you plan to do so?

Mr. SANT. We probably will have a report in the next several months.

Mr. KLINGENSTEIN. Mr. Williamson, let me ask you about your system of edits; that is, the system that's designed to kick out submissions made by the companies if there is a problem in the submission.

It's my understanding that there are a number of warning edits; is that correct?

Mr. WILLIAMSON. There are 107 fatal edits and 54 warning edits in the system.

Mr. KLINGENSTEIN. What's the purpose of the warning edits?

Mr. WILLIAMSON. The warning edits are informational to us, the way we use that. When we see something that's not correct, but it's not of the magnitude to stop a payment, that we would take those warning edits and we keep them in our database and we can look back at those to test for systemic problems and those types of errors.

Mr. KLINGENSTEIN. On what occasions have you used those warning edits?

Mr. WILLIAMSON. I'd have to ask Mr. Mayberry to answer that.

Mr. MAYBERRY. We have used those for many months now to periodically check on the quality of royalty rate-related information; in other words, information that affects the calculated royalty rate on the Form 2014.

Mr. KLINGENSTEIN. But you haven't used these warnings on Indian leases in particular, have you?

Mr. MAYBERRY. Typically, warning edits rejected by the system have not been reviewed nor have they been corrected.

Mr. KLINGENSTEIN. In fact, there's no systematic procedure for reviewing the warning edits; isn't that right?

Mr. MAYBERRY. That is correct.

Mr. KLINGENSTEIN. Let me ask you, Mr. Williamson, about your information program administered by the royalty compliance division. MMS has a number of tools at its disposal in order to help it insure compliance with the system. These tools include penalties, audits of course, rewards, assessments, cancellations of leases, et cetera.

Mr. Norman reported to the committee yesterday that MMS had serious deficiencies in a number of these areas of enforcement. Let me start with the penalty system.

Mr. Norman concluded that the implementation of an effective penalty system is important, really critical to the system. He made analogies to the use of the IRS penalty system. As you may know,

the IRS has a number of penalties in its systems and uses them regularly.

Do you agree, Mr. Williamson, that an effective penalty system is critical to insure compliance with the royalty management program?

Mr. WILLIAMSON. To prevent—for deterrence, I do. I agree with that.

Mr. KLINGENSTEIN. Okay. Let me ask you, why is it that MMS did not have any formal penalty program in place until May of 1988?

Mr. WILLIAMSON. I can't speak to that, as to why they didn't have before then, but I will say that in the area of penalties, that's one area that I do intend to look at. The way the statute is written, we can assess penalties for willful violations of the statutes and regulations.

There's always a question of discretion of how you interpret that statute. I think at this point, from some of the concerns raised here and some of the concerns raised by allottees and tribes, I think we need to reassess how we view that statute. That may be a tool that we need to look at real closely and use more.

Mr. KLINGENSTEIN. Mr. Norman laid out a pretty grim picture of the use of your penalty system over the last seven years. He said MMS has initiated penalty procedures in only 35 instances; is that correct?

Mr. WILLIAMSON. We initiated non-compliances in 35 instances. The way the non-compliance works, if it's not willful, then you have a cure period, a 20-day cure period. Most of them get cured in those 20 days; that's correct.

Mr. KLINGENSTEIN. Do you view that, the fact that the companies can cure the penalties, to be a weakness in the system?

Mr. WILLIAMSON. It depends on whether that is viewed by MMS as being a willful violation. As I often—not often, but I've thought of and discussed with the staff, there may be room in the area for where we see a company that continues to perform an act that could be interpreted as being willful, sloppiness for instance, if the sloppiness continues in the same area, then you can deduce that it may be willful or neglect. That may be a way we can broaden that area.

Mr. KLINGENSTEIN. Putting aside the willful area, isn't it correct that the IRS system, for example, regularly imposes non-intentional penalties without an opportunity to cure? If you allow a cure period regularly in the imposition of your penalties, doesn't that just encourage companies to sit back and wait to be penalized?

Mr. WILLIAMSON. I agree with you on your IRS analogy. Yes, you could make that argument that some companies would tend to do that.

One of the things that I think we need to look at is our system is a newer system. As we get these things worked out, we should see more compliance, but you make a good point.

Mr. KLINGENSTEIN. Mr. Norman noted that over the seven-year period that MMS had been in existence only $73,000-plus has actually been collected; is that correct?

Mr. WILLIAMSON. That's true, through the non-compliance assessments. Most of that is in interest. I'm sorry, most of the seventy-three is in assessments; that's correct.

Mr. KLINGENSTEIN. Moreover, we heard that only one company had been assessed penalties for its activities on Indian lands; is that also correct?

Mr. WILLIAMSON. There have been two penalties, I think.

Mr. KLINGENSTEIN. Two penalties, one company?

Mr. WILLIAMSON. We've had 37 notices of non-compliance, 13 of which involve violations of Indian leases, but as far as penalties, I think that I've seen two penalties.

I don't know——

Mr. KLINGENSTEIN. Are you saying two penalties on a company doing business on Indian lands; is that correct?

Mr. WILLIAMSON. I think you're correct; yes, sir.

Mr. KLINGENSTEIN. And, in addition, the large proportion of the penalties that are initiated are not paid ultimately because they are cured; is that right?

Mr. WILLIAMSON. Under that system that's the way it works; yes, sir.

Mr. KLINGENSTEIN. Are you aware, Mr. Williamson, that at least two other investigations, two other congressional investigations conducted over the past several years have similarly detailed severe weaknesses in MMS's penalty system?

Mr. WILLIAMSON. Yes.

Mr. KLINGENSTEIN. In 1985, for example, the House Committee on Government Operations issued a report entitled, "Indian Oil and Gas Royalty Payment Problems Persist." In it, the committee noted that, "Although the 1982 act"—that's the Federal Oil and Gas Royalty Management Act—"provided for both civil and criminal penalties for non-compliance, that then 2½ years after the passage of the law MMS had not yet imposed such penalties."

Then a year later a report issued by the Yates subcommittee of the Committee of the Interior noted that very little improvement had been made and sharply criticized MMS for its failures in this area.

It seems three years later, Mr. Williamson, that very little, if any, progress has been made. Can you comment on that?

Mr. WILLIAMSON. In the past we may have taken a narrower view of the penalty system, but what I want to do is get in there and look at it. We may want to broaden it.

Mr. KLINGENSTEIN. Let me ask you——

Mr. WILLIAMSON. I think that's a fair thing we need to look at.

Mr. KLINGENSTEIN. Let me ask you whether you——

Mr. WILLIAMSON. I agree with you.

Mr. KLINGENSTEIN [continuing]. Whether you believe that the 20-day cure period is a loophole that should be corrected.

Mr. WILLIAMSON. In some instances it is a loophole, I think. In many instances it's there for a proper purpose, but I'm sure you can abuse that.

Senator MCCAIN. In what instances is it there for a proper purpose?

Mr. WILLIAMSON. When you have a company that makes a legitimate mistake that they did not, their system did not catch an

error. You see one; it's not consistent, systemic through the process.

As we bring this system up to speed in the last six or seven years, it's a very complicated process of information. There are mistakes that can be made and that you may not want to penalize for those irregular errors.

Mr. KLINGENSTEIN. How about in the areas of——

Mr. BALLEN. Pardon me a second. Mr. Williamson, if I make a mistake on my taxes, inadvertent or not, I get a penalty. I want to know how you think you can have an effective system if there's no penalty if you make a mistake. With penalties, you can cure the mistakes.

Mr. WILLIAMSON. You're absolutely right, penalties make your system more effective. We do have assessments and interest that we charge, but you're right. Your point is well taken.

Mr. BALLEN. Thank you, sir.

Mr. KLINGENSTEIN. Let me turn to the willful area. Is it correct that MMS has only imposed one willful violation over the last seven years?

Mr. WILLIAMSON. I think that's the issue we were discussing—it's either one or two.

Senator MCCAIN. Whatever it is, it isn't much.

Mr. WILLIAMSON. I will update the record for you on that particular instance.

Mr. SANT. We have issued two. I signed one since you deposed me.

Mr. KLINGENSTEIN. Okay. Why so few willful penalties?

Mr. WILLIAMSON. Again, we haven't in the past viewed that statute broad enough, in my opinion.

Mr. KLINGENSTEIN. Let me turn to the area of rewards. Mr. Norman noted yesterday that the Federal Oil and Gas Management Act, FOGRMA, contains a provision in it to provide rewards. These are incentives for company employees to produce to MMS information which could lead to the recovery of underpayments. Are you familiar with that provision?

Mr. WILLIAMSON. Yes, sir.

Mr. KLINGENSTEIN. First of all, Mr. Norman noted that that provision has been used very infrequently. Why is that?

Mr. WILLIAMSON. No. 1, I think we need to encourage and communicate that system is available and get the information that that system is very useful. That is an area that we don't at this point have proper funding for. We've asked for the funding level for the payments of rewards. We think that's definitely a good incentive that needs to be encouraged. We attempt to and try to encourage that system. We would like to see that used more.

Mr. KLINGENSTEIN. In fact, you haven't actually given out any rewards, have you, at this point?

Mr. WILLIAMSON. To my knowledge, we have not.

Mr. KLINGENSTEIN. Is it also correct that you interpret that provision in FOGRMA not to apply to Indian leases?

Mr. WILLIAMSON. Yes.

Mr. KLINGENSTEIN. That seems like a pretty strange reading of the law, particularly since there is a provision in it that refers specifically to Indian tribes.

Mr. WILLIAMSON. I understand your query. I have not looked at that provision of the law. That's something that you directed my attention to that we need to maybe revisit. There may be some room in that particular statute for that provision.

Mr. KLINGENSTEIN. Do you think that's an area where Congress might make changes to the law to make it clear that it should apply to Indian leases?

Mr. WILLIAMSON. I think it's definitely a good area that Congress may help us in that area.

Mr. KLINGENSTEIN. Let me turn now to MMS's audit strategy, Mr. Williamson.

Can you describe briefly MMS's audit strategy dealing with Indian leases?

Mr. WILLIAMSON. Yes. We have—a current audit strategy we have right now in place, we have a coverage of and we attempt to cover all the major companies, which is I think 11 or 12, and the 220 other companies we've identified for audits.

Currently, since the system began, we have 4800 leases, Indian leases, in my understanding, and we covered about a third of those leases. So we have about a third coverage.

Our strategy is, the way we operate is, when we do an audit, we at least cover a particular lease or sample from each Indian tribe and, if there is an allottee lease the company is involved in, that gets audited

A nonstandard lease agreement per category is also audited. So we do get coverage for those areas.

Mr. KLINGENSTEIN. But now you don't physically audit all 4700 Indian leases; correct?

Mr. WILLIAMSON. No, it was never our intention to do that.

Mr. KLINGENSTEIN. You take samples of those and audit the samples?

Mr. WILLIAMSON. We do sample coverage; you're exactly correct.

Mr. KLINGENSTEIN. These are portions of the total numbers and portions of the time periods involved?

Mr. WILLIAMSON. You're correct; that's true.

Mr. KLINGENSTEIN. Because the up front fiscal accounting division is incapable of presently catching most errors or flagging for prime audit candidates, this puts particular pressure on the audit system to do a complete job of finding underpayments; isn't that correct?

Mr. WILLIAMSON. The royalty compliance division, that's one of its purposes. When we designed the AFS system, it was not—it was to collect and move the money through the system as fast as possible in the most efficient manner. That's why we have the royalty compliance division; you're exactly right.

Mr. KLINGENSTEIN. Now, Mr. Williamson, when MMS conducts an audit and finds a problem that is systemic—that is, that applies throughout the company's leases—does it then require companies to go back and make corrections on those other leases that weren't actually physically audited?

Mr. WILLIAMSON. Yes, it does.

Mr. KLINGENSTEIN. Okay. Is that what is commonly referred to as a self-audit?

Mr. WILLIAMSON. Some people have referred to it as that; that's correct.

Mr. KLINGENSTEIN. Have companies contested whether they should be required to perform these self-audits?

Mr. SANT. Generally, the companies have contested the requirement to do what the companies call a self-audit. Our preference is to call it a restructured accounting. When we actually do an audit, we have to make regulatory interpretations, but once we find some problem in reporting the royalties, we order the companies to go back and do the accounting in a way we tell them to do that, and, yes, though, they have filed what we call administrative appeals when the royalty compliance division has issued orders to do the restructured accounting.

Mr. KLINGENSTEIN. And it's critical for them to perform this so-called restructured accounting to save MMS its resources; is that correct?

Mr. WILLIAMSON. Yes.

Mr. KLINGENSTEIN. Is there a role here that you would suggest Congress could play to make the requirement that companies perform these self-audits more clear, if it's not already clear?

Senator MCCAIN. Your associate can go ahead and answer the question himself; that would be fine.

Mr. SANT. As you said, it is very important for us to get complete coverage of an issue with a company. If there is something that we could do to make it more clear to companies that they are required to correct their accounting when they've done it incorrectly, yes, we'd welcome the help.

Mr. KLINGENSTEIN. Okay. Is it correct, Mr. Williamson, that MMS did not begin performing comprehensive audits in earnest until approximately 1986?

Mr. SANT. That's probably true of the Minerals Management Service. There was the effort, started back in 1983–84 by the Inspector General's office, the so-called "look-back audits" that the Department thinks were comprehensive audits.

Mr. KLINGENSTEIN. Why was it that it took MMS so long to begin conducting these audits, particularly in view of their importance?

Mr. SANT. A lot of the time after the look-back audits were completed it had much follow-up by the Minerals Management Service. We were completing and then initiating the billing action on these look-back audits.

Mr. KLINGENSTEIN. Now is it correct that these look-back audits were heavily focused on the big dollar leases which are mainly offshore leases?

Mr. WILLIAMSON. In the early years that's true.

Mr. KLINGENSTEIN. Of course, those are not Indian leases?

Mr. WILLIAMSON. Yes, that's true also.

Mr. KLINGENSTEIN. So a lot of MMS's time was spent on conducting audits on non-Indian leases; is that right?

Mr. WILLIAMSON. And the look-back audits; that's correct. However, today, in our procedure today we audit no matter what the dollar amount across the board, high or low.

Mr. KLINGENSTEIN. I understand what you're doing today, but it took you four years to begin auditing Indian leases basically.

Mr. WILLIAMSON. I think that's a fair criticism. As our system got up to speed—that's true.

Mr. KLINGENSTEIN. Do you consider that a failure of the trust responsibility, Mr. Williamson?

Mr. WILLIAMSON. I think we can do better than we've done in the past. I definitely do think we can.

Mr. KLINGENSTEIN. Let me ask you about some specific findings that this committee has made, starting first in the area of major portion analysis or that procedure which is designed to insure that royalties on Indian leases are being paid on the true fair market value of production.

Mr. Norman and Mr. Fetterolf, the committee's oil and gas expert, testified yesterday that on the basis of the sworn testimony taken of companies, companies are uniformly failing to perform major portion analysis on both oil and gas leases. Are you aware of that fact?

Mr. WILLIAMSON. I'm not personally aware of that fact. Yes, MMS is aware of that fact.

Mr. KLINGENSTEIN. What is MMS doing to insure that companies do perform major portion analysis on these leases?

Mr. WILLIAMSON. When we do our audits, we cast that in our audits.

Mr. KLINGENSTEIN. Well, that may be true on selective audits, but companies told this committee that they are uniformly failing to do this and selective audits appear to be an inefficient way of enforcing that requirement.

Mr. WILLIAMSON. I think that's information that we'd be interested in seeing. I think, if that's happening, then we need to be aware of it and we need to find a solution to it.

Mr. KLINGENSTEIN. Well, some companies have told the committee that it's difficult for them to perform major portion analysis because the analysis depends on proprietary information which is difficult for them to uncover.

Mr. WILLIAMSON. The database is difficult in this area when you're not dealing with all Federal lands. When you're dealing with private versus public lands, you don't have the information available.

However, the Minerals Management Service is at this time building a database, working with the State of Oklahoma and New Mexico, to build information on pricing.

Mr. KLINGENSTEIN. Doesn't MMS have an independent duty to perform major portion analysis if companies can't for practical reasons? In other words, if companies have been reporting that they cannot perform analysis, why hasn't MMS been doing it for them since MMS has access to this information?

Mr. SANT. As Mr. Williamson said, we are trying to get databases that the State of New Mexico and the State of Oklahoma have so that we can calculate the majority pricing analysis. We are researching right now and looking at possible regulatory action that would permit us to get the data so that we could publish the majority price, but what is required is that all volumes and all values of gas or oil sold from a particular field be available.

Mr. BALLEN. But you haven't made this effort. You say you're doing it now, but it hasn't been done in the past, has it? This is

required by statute, the NTL-5 Act as passed by Congress several years ago; is that correct? I see you're shaking your head, Mr. Williamson. Is that correct?

Mr. WILLIAMSON. The statute, as I understand it, requires major portion analysis to occur on Indian lands; that's true.

Mr. KLINGENSTEIN. And it hasn't been done——

Mr. WILLIAMSON. In some instances you're correct.

Mr. KLINGENSTEIN. This committee knows from testimony it heard from at least one tribe that it is possible to do major portion analysis because that tribe has done it.

Mr. WILLIAMSON. Oh, yes, it is possible, and in some areas it's a lot easier to do major portion analysis than others. When you have others that are all Indian or Federal lands, it's a lot less difficult than when you have areas that are not. It occurs, and it occurs well in some areas. Some areas it's more difficult because of the database.

However, we do have benchmarks that we can go to to determine price also.

Mr. KLINGENSTEIN. This is a requirement of all Indian leases whether arm's length or not?

Mr. WILLIAMSON. That is true.

Mr. KLINGENSTEIN. It's only a requirement on some Federal leases?

Mr. WILLIAMSON. Not arm's length.

Mr. KLINGENSTEIN. Do you consider the failure to insure the performance of major portion analysis another example of the failure of the trust responsibility?

Mr. WILLIAMSON. I think you have to consider that with the ability and the systems that we're working with. I'm not the one to speak to that because I wasn't actually involved in that process.

However, I'm aware of that process and I'm aware of our capability now, and we'll do a better job in that area.

Mr. KLINGENSTEIN. Mr. Williamson, let me ask you about your audit cycle or period, and this is the period of time to which your auditing relates. Mr. Norman noted in his testimony before the committee yesterday that, because the MMS got such a late start in performing its audits, it's now trying to catch up and it is still performing audits on back periods; is that correct?

Mr. WILLIAMSON. That's correct.

Mr. KLINGENSTEIN. We understand the Department recently committed itself to stop the auditing for the period 1980 to 1983; is that correct?

Mr. WILLIAMSON. I would take issue with the word "stop." The policy of the past administration was to complete the audit period from 1980 to 1983 in a time period of later this year.

Mr. KLINGENSTEIN. But, in fact, in a letter to oil company representatives that former administration made a commitment to close out the audit period for 1980 to 1983; is that not correct?

Mr. WILLIAMSON. That's true, and my understanding and the way that I approach that, that's a goal; that's not a dead end. If we're not finished by then, you'll see that date slide somewhat.

Mr. KLINGENSTEIN. But that agreement reflected in a letter from the Deputy Assistant Secretary to a company representative was made without consultation with the tribes; is that correct?

Mr. WILLIAMSON. My understanding is that they were not consulted regarding that particular letter; that's true.

Mr. KLINGENSTEIN. And this period, 1980 to 1983, is a very important one, isn't it, because it——

Mr. WILLIAMSON. You're exactly right. In 1982 we had the most rigs in the United States running ever, over 4,000 rigs; now we're down around 800 or 900. So that's definitely a very important period.

Mr. KLINGENSTEIN. Don't you consider a failure to consult tribes and go ahead and make a commitment to industry to close out that very important period represents another failure of the trust responsibility?

Mr. WILLIAMSON. We have set up a meeting Thursday in our offices to discuss that with the States and the tribes, to discuss what our policies actually were, how they were articulated, how they were communicated. I think there is a failure somewhat of communication in this area to actually articulate what our thoughts are.

Mr. KLINGENSTEIN. Has that meeting been prompted at least in part by the concerns expressed by this committee?

Mr. WILLIAMSON. Yes, it has, definitely.

Mr. KLINGENSTEIN. Let me ask you about the area of MMS's relationship with certain tribes. We were told yesterday that MMS has failed to use a provision in FOGRMA which allows the Federal Government to help tribes fund their auditing and their accounting procedures, so-called 202 agreements. Do you know how many such agreements that MMS has entered into with tribes, Mr. Williamson?

Mr. WILLIAMSON. I think it's two.

Mr. KLINGENSTEIN. Two over a six-year period?

Mr. WILLIAMSON. I think that's two over our history.

Mr. KLINGENSTEIN. That's the Navajo and Northern Ute Tribes; is that correct?

Mr. SANT. That's correct.

Mr. WILLIAMSON. I think those are the two tribes. Yes, that's true.

Mr. KLINGENSTEIN. Why have so few of these 202 agreements been entered into?

Mr. WILLIAMSON. I can't speak to why they haven't been entered into in the past personally. However, I will say that that's a program that we offer that we need to communicate better to the tribes to get more involvement because it's definitely to our benefit and I think it enhances our trust responsibilities if they're more involved in that area.

Mr. KLINGENSTEIN. The committee has conducted a survey of Indian tribes, as was reported yesterday. Some tribes with mineral interests were not even aware of this opportunity under the law.

Mr. WILLIAMSON. I think you're correct.

Mr. KLINGENSTEIN. Why is that?

Mr. WILLIAMSON. I think that's—I think we need to accept a lot of responsibility because we have not communicated to the best of our ability to do that. One of the things you heard this morning, I think one of the good points of our system is our external affairs office run by Vern Ingraham in Lakewood. We're going to keep him very busy over the next few months, I can assure you.

Mr. KLINGENSTEIN. Going back to the penalty program, Mr. Williamson, is it correct that the penalties recovered by MMS are kept by the Government and not paid to Indian mineral owners?

Mr. WILLIAMSON. That's my understanding.

Mr. KLINGENSTEIN. Has MMS considered whether that aspect of the law should be changed?

Mr. WILLIAMSON. Not to my knowledge that we have. No, I am told we have not.

Mr. KLINGENSTEIN. Do you have any opinions on that issue?

Mr. WILLIAMSON. Not at this point, no.

Mr. KLINGENSTEIN. Is it correct that when tribes enter into these 202 agreements, cooperative agreements with MMS, and go ahead and identify underpayments, that they are not permitted to actually collect those underpayments?

Mr. WILLIAMSON. I'm sorry, could you repeat that?

Mr. KLINGENSTEIN. The tribes entering into 202 agreements are not permitted under the law to go ahead and institute collection procedures for the underpayments?

Mr. WILLIAMSON. My understanding is, when we do an audit, the primary responsibility and the ultimate responsibility lies with the Minerals Management Service. We can transfer or assign the auditing function to a tribe. However, we maintain the ultimate responsibility.

Mr. KLINGENSTEIN. I'm not sure that it has been made clear to the tribes that that function can be transferred to them.

Mr. WILLIAMSON. The follow-up to that is we issue the actual bill. We are the regulatory authority with the power to enforce. We have not assigned that responsibility.

Mr. KLINGENSTEIN. Mr. Chairman, that concludes my questions.

Senator McC[illegible]IN. Thank you.

Ms. SOLLER. M[illegible] Williamson, I'd like to hear you define what you consider the trust responsibility of MMS toward Indians.

Mr. WILLIAMSON. I think in the very first when I came over to the Interior Department, Secretary Lujan has made absolutely crystal clear that we have the commitment to enforce and to carry out our trust responsibilities. He's done that on several occasions and to me personally. So I think we have added significance in carrying forth and meeting that commitment.

We have a fiduciary responsibility, and we hold that to the highest. I think the Secretary has placed the trust responsibility for the Indian in the Department of the Interior at the highest level, the highest priority.

The way we view our trust responsibilities at MMS and the realty management program is to do the most effective and efficient job we can. We realize we can do a better job in that area.

Ms. SOLLER. Because one of the people in your Department described the trust responsibility to us as something—as a matter of fact, most of the people in your Department said they didn't know what it was, that it was too ill-defined. Is that your position or do you think the trust responsibility is defined well enough when it comes to the handling by MMS of Indian oil and gas royalties?

Mr. WILLIAMSON. I think the responsibility is defined. The strategy that we carry forth delineates that information and sets forth our goals and our missions. Our goals, our missions, and our objec-

tives are set forth and delineating, communicating throughout headquarters and the fields.

Ms. SOLLER. So you don't have any problem with the definitions as they exist right now?

Mr. WILLIAMSON. Not the definitions. If we're not fulfilling those goals, then we need to up the ante, if you will.

Ms. SOLLER. Okay. Do you define trust responsibility in terms of numbers of dollars spent by MMS for dollars recovered for Indians?

Mr. WILLIAMSON. No.

Ms. SOLLER. So, in your definition it would be fine to spend five Federal dollars to get one Indian dollar; is that right?

Mr. WILLIAMSON. I think it's a matter of quantity and quality.

Ms. SOLLER. But would you be willing——

Mr. WILLIAMSON. In many instances we do.

Ms. SOLLER. Okay. Have you communicated this to the people down through your Department?

Mr. WILLIAMSON. We are in the process. I have communicated it and I will be communicating it.

Ms. SOLLER. Are you aware that in the depositions one of the heads of departments indicated, "We will not spend $2 of Federal money to get $1 of Indian money, but we don't do this entirely under a cost-effective relationship"? Is that contrary——

Mr. WILLIAMSON. I did not read that particular statement, but I would anticipate that we do spend $2 sometimes to get $1. It's a question of reasonableness. It's a question of effectiveness. Those things play into it—how can we be most effective.

Ms. SOLLER. All right. Do you see any difference in the trust responsibility that you have toward individual allottees versus toward tribes?

Mr. WILLIAMSON. I think the trust responsibility just increases as you come to a smaller segment of our Indian society.

Ms. SOLLER. Has there been any analysis by MMS as to exactly what coverage under the audit strategy individual allottees have received? How many individual allottee leases have been audited to date?

Mr. WILLIAMSON. To date?

Ms. SOLLER. Yes.

Mr. WILLIAMSON. Of the 1,600, I don't know if we have a number for the individual allottees. We have not broken—I've just been told we haven't broken it out per tribes and allottees.

Ms. SOLLER. So if you say you have a higher responsibility to individual allottees, how do you know whether you're satisfying that when it comes to audits if you haven't analyzed whether or not they're covered?

Mr. SANT. If I may respond a little bit and get back to the material Mr. Klingenstein was talking about of how we audit. We sample leases. We do sample both tribal leases and Indian allottee leases. If we find problem reporting, we will ask—tell the company that they must correct its reporting on all its other tribal or allotted leases.

So looking at every allotted lease does not—to do a comprehensive audit does not require looking at every allottee lease.

Ms. SOLLER. But are you aware that the companies reported to us that when they are told to do that by MMS they're basically not going to do it?

Mr. WILLIAMSON. No, I was not aware of that.

Ms. SOLLER. Have you followed up to see whether or not, when you tell a company, please do this for all your allotted leases, whether they ever actually do it?

Mr. WILLIAMSON. If we haven't in the past, we will in the future.

Ms. SOLLER. Can you say with any degree of certainty as to what coverage, either directly by direct audit or indirectly by any kind of comprehensive follow-up, has been done on allotted leases throughout?

Mr. WILLIAMSON. No, not without that analysis, I don't think.

Ms. SOLLER. So, in other words, even though you say that there's a higher trust responsibility for allottees, it hasn't been analyzed so we can know whether or not it's been met?

Mr. WILLIAMSON. Well, that's taking just a strict view of audits. There are other things in the process that go into that also. I understand that you're interested in the audit section, but I would not define that so narrowly. I think there are other places where we give priorities and we give special attention where it's a good idea.

Ms. SOLLER. Where?

Mr. WILLIAMSON. Well, I think, first of all, payments coming in, Indian payments are the first priority, for processing and out the door first.

Ms. SOLLER. Right now, for my purpose right now, I'm separating out allotted from tribal.

Mr. WILLIAMSON. Okay.

Ms. SOLLER. What I want to know is what special attention has been given to allotted leases, not just Indians. Can you tell me what special attention has been given to allotted leases?

Mr. SANT. That was back in 1985 when we first sat down with BIA and came up with an Indian audit strategy. The principal concern there was allotted leases and that was to set up a referral mechanism where an allottee, if they had a question on their lease, could make an inquiry, and if the Bureau of Indian Affairs couldn't answer it, they would refer it to the Minerals Management Service to do either the desk reviews or a field audit.

Ms. SOLLER. Did you have any contact with actual allottees.

Mr. SANT. Yes, there was some contact with allottees?

Ms. SOLLER. What?

Mr. WILLIAMSON. I was not there at the time, but Vern Ingraham was meeting with the allottees that had the leases to understand some of their concerns. He meets with them on follow-up when we take on a referral.

Ms. SOLLER. So other than Mr. Ingraham's contact through the Office of External Affairs, can you name me any instance in which MMS has consulted directly with allottees to determine what they need from the system?

Mr. WILLIAMSON. Indian allottees are members of our realty management advisory committee.

Ms. SOLLER. One of them; right? One member out of 26 is an allottee?

Mr. WILLIAMSON. I think there's also—I don't know if you're—Oklahoma has a royalty minerals group. That's an allottee group. That's also a member.

Ms. SOLLER. That is the one.

Mr. WILLIAMSON. Is that the——

Ms. SOLLER. That is the one.

Mr. WILLIAMSON. I'm also told that the Council of Energy Resource Tribes represents the allottees.

Ms. SOLLER. Which is tribal, not allottee; isn't that right? Council of Energy Resource Tribes.

Mr. WILLIAMSON. I think you're right.

Ms. SOLLER. So out of a group of 26 people, 13 of which are industry, there is 1 allottee.

Mr. WILLIAMSON. And five other Indian tribe representatives.

Ms. SOLLER. Right, but I'm talking about allottee interests right now.

Mr. WILLIAMSON. That's true.

Ms. SOLLER. And that one individual is an Oklahoma allottee and may or may not have any contact or knowledge about the allottee concerns in the rest of the country; isn't that right? In fact, he testified here yesterday that he doesn't feel capable of representing the allottee interests in the rest of the country. Are you aware of that?

Mr. WILLIAMSON. I was not aware of his testimony, but I think I don't disagree with that.

Ms. SOLLER. All right. Mr. Ingraham's group, the Office of External Affairs, is the target point at MMS through which allottee concerns are supposed to go; is that right?

Mr. WILLIAMSON. That's true.

Ms. SOLLER. Okay. That office has three people in it; right?

Mr. WILLIAMSON. Yes.

Ms. SOLLER. And that's supposed to cover the target for the entire country of allottees?

Mr. WILLIAMSON. Currently that's the amount of FTEs he has. That's one of the things we're evaluating, expanding that external affairs outreach program. There's definitely a need for that. That's one of the things I want to take a hard look at and see what resources we have and how we can move them in that area.

We can do a better job in communication. That's something that we're endeavoring to do.

Ms. SOLLER. In the past are you aware that the position of MMS about that office was that there weren't that many referrals and that it was not that overloaded?

Mr. WILLIAMSON. That may be a fact that there weren't that many referrals and it was not that overloaded, but I can't speak to the position MMS had to that office.

Ms. SOLLER. Are you aware of the fact that, in fact, BIA, one expert in the area, has stopped referring cases because he's got one audit that was referred to that office that was sitting there for 14 months, and his attitude is, why refer, we don't get answers in time.

Mr. WILLIAMSON. I was not aware of that particular case, but I do understand that we do the reviews and we do the referrals, and

we process them through the system. I was not aware it took that long.

Ms. SOLLER. Are you aware of how long you have audits of allottee cases right now sitting not in the External Affairs Office, but in the Royalty Compliance Division?

Mr. WILLIAMSON. I'm sorry, can you restate that?

Ms. SOLLER. Are you aware that you have many cases that are as old as 1986 from referral that are still sitting in the Royalty Compliance Division going through their audits?

Mr. WILLIAMSON. I was not aware of those specific cases.

Ms. SOLLER. Do you think that an audit that was referred in 1986 and is still sitting there now in 1989, for three years on an allottee lease, is that to you a fulfillment of the trust responsibility to that allottee?

Mr. WILLIAMSON. I think the question goes to, can we move that through the system faster, and I think we probably can. I don't know specifically about those cases. There may be something about those cases, but there may not be.

Ms. SOLLER. Even if they're sitting there because they have to have the majority pricing plan done, is that still sufficient that they can sit there for three and four years, in your opinion?

Mr. WILLIAMSON. Three and four years seems a long time.

Ms. SOLLER. If it was your audit, would you be satisfied with that?

Mr. WILLIAMSON. I would want it to speed up.

Ms. SOLLER. In fact, doesn't the trust responsibility at its essence mean that the very least an allottee can expect is what a person outside of the trust responsibility would get?

Mr. WILLIAMSON. I think it would be higher than that.

Ms. SOLLER. Should it be at least that high, though; right?

Mr. WILLIAMSON. I think—that's—I wouldn't move the floor down that low. I think the floor is a lot higher than that.

Ms. SOLLER. I want to go to the requirements of FOGRMA for a minute right now as they apply to allottees. FOGRMA says, doesn't it, that MMS has an obligation within a short period of time of getting the money to an Indian money account, the appropriate Indian money account? Isn't that what FOGRMA says?

Mr. WILLIAMSON. That's true.

Ms. SOLLER. MMS has interpreted that to mean to an aggregate account rather than to the individual allottee's account; isn't that right?

Mr. WILLIAMSON. That's true.

Ms. SOLLER. And, in fact, when MMS can just give the money to BIA, that is what it has felt was the satisfaction of its trust responsibility; isn't that right?

Mr. WILLIAMSON. That's also true.

Ms. SOLLER. That's not what the statute says, though, does it?

Mr. WILLIAMSON. I think you're addressing the issue of appropriate Indian account.

Ms. SOLLER. Right.

Mr. WILLIAMSON. Yes, that's an area that also I think we could use more defining under the statutes. This committee could help us in that area.

Ms. SOLLER. You would like to see that amended to make——

Mr. WILLIAMSON. I think so. Also, a lot of those payments come in the last day or two of the month, and it's very difficult to move it out to a specific Indian account in one or two days. However, it's easier to move it to a larger account. However, under the appropriate Indian account, if you can move it to one account and you extend that period of time for the next cycle, we might be able to pay interest on that monies.

Ms. SOLLER. But interest hasn't been paid so far?

Mr. WILLIAMSON. That's true. Under the statute, we're not allowed to pay interest, from my understanding.

Ms. SOLLER. Right. And this statute is the Federal Oil and Gas Royalty Management Act of 1982; right?

Mr. WILLIAMSON. That's true.

Ms. SOLLER. We're in 1989. Why hasn't MMS, if they thought this statute was unworkable, haven't they come forward in seven years and said, "Help us fix it"?

Mr. SANT. In fact, we had submitted legislation twice to the Congress and the Congress did not do anything with that.

Ms. SOLLER. About that Indian money account?

Mr. SANT. Yes. Yes, ma'am.

Mr. WILLIAMSON. Yes, ma'am. The appropriate Indian account situation has been visited before.

Senator MCCAIN. Will you send us those recommendations that you made before again, please?

Mr. WILLIAMSON. Okay.

Senator MCCAIN. Can you do that?

Mr. WILLIAMSON. Yes.

Ms. SOLLER. I want to talk about the EOP for a minute.

Mr. WILLIAMSON. Yes, ma'am.

Ms. SOLLER. You have expertise in the oil and gas industry; right? Personal expertise?

Mr. WILLIAMSON. Yes, not in Indian accounts.

Ms. SOLLER. Can you read that?

Mr. WILLIAMSON. Without glasses.

Ms. SOLLER. Even with glasses. Feel free to go up to it. Can you read that?

Mr. WILLIAMSON. That information, I don't think I could even going up to it, because that information has information on it that MMS would not be—that we would not have information. We would need more information to be able to explain to you our particular interest and our funds that are in that account.

Ms. SOLLER. Then how can anybody expect an individual Indian without your background and without your education to understand what that means?

Mr. WILLIAMSON. Your hitting on a good point. This is a very technical and highly sophisticated information that's being delivered. The question is, "Can this form be improved?". I submit to you it can be.

Ms. SOLLER. Well, is there any reason—I want to point your attention down to the lower form, which is an oil and gas statement by an oil company directly to a fee owner.

Mr. WILLIAMSON. Okay.

Ms. SOLLER. Is there any reason why the MMS system could not produce a form like that, that has non-rolled-up information on it?

Mr. WILLIAMSON. I think we do present information with—I don't know if we do it in that particular form, but we do present information twice monthly.

Ms. SOLLER. But rolled-up information, can you produce a form like this that has non-rolled-up information? Is there any reason why the MMS computer system can't do it?

Mr. WILLIAMSON. Not to my knowledge.

Ms. SOLLER. If you got a statement like that, would you be satisfied with the one that MMS and BIA together are giving to individual allottees, you personally?

Mr. WILLIAMSON. Well, first of all, I'd have to understand exactly what all is involved in it. I'd have to know what my interests were, what my expectations were before I could speak to that.

Ms. SOLLER. If you, as an oil and gas owner, got a statement like that and wanted to know what the money was from, would that satisfy you?

Mr. WILLIAMSON. Without having knowledge of that form, I won't have an opinion right now. I may be able to sit down and understand that, discussing it with the BIA people in the field. I don't know.

Mr. MAYBERRY. I would add that we have consulted and asked for input from tribes and allottees on the information that is furnished, but we only furnish information to the tribes. They have provided recommendations over the past couple of years, some of which have been implemented and others which we would like to implement in our future program improvements.

Ms. SOLLER. What contact on the EOP have you had with allottees, not tribes?

Mr. MAYBERRY. We have had discussions historically and fairly recently as a part of the advisory committee and its working panels on program improvements wherein we did have some allottee representation involved.

Ms. SOLLER. One. We're back to that one representation on RMAC again; right?

Mr. MAYBERRY. That is true, we had one representative on that work panel.

Mr. WILLIAMSON. My question would then also go to our External Affairs Office, and the question I was considering is whether we've had specific interest and information from allottees on this EOP in our External Affairs Office. I don't know for a fact, but I assume that's true.

Ms. SOLLER. Let me just, for your information, let you know that that one representative of RMAC is in the back of the room and he testified that he's not real happy with that form; that he's tried to make it known, but since RMAC is a consortium group, it's not yet been implemented.

Mr. WILLIAMSON. I understand.

Ms. SOLLER. In fact, FOGRMA also says that some form, whatever it's going to be, whether it's this or something else, goes out with the check, doesn't it?

Mr. WILLIAMSON. I'm sorry?

Ms. SOLLER. FOGRMA says that the explanation of payments is to accompany the check, doesn't it?

Mr. WILLIAMSON. I think that's true.

Ms. SOLLER. That's not happening now, is it?

Mr. WILLIAMSON. We send the information to the accounts or to the Bureau of Indian Affairs with our FDRs twice monthly.

Ms. SOLLER. But it's not going out with the check, is it?

Mr. WILLIAMSON. We do not send checks directly.

Ms. SOLLER. Do you know, just as part of the system, whether or not FOGRMA's requirement that there be an explanation of payments with the check is being fulfilled now?

Mr. WILLIAMSON. I don't know.

Ms. SOLLER. How much communication does MMS have with BIA to see whether or not even the simple requirements of FOGRMA, let alone the whole trust responsibility, are actually being fulfilled when it comes to allottees?

Mr. WILLIAMSON. I can't speak to the exact amount, but I will indicate that I know we've seen improvement in this area. I think Pat Ragsdale has in his reign improved the system. I would suggest to you that the nominee in front of the Senate now, Eddie Brown, if he is confirmed—and I will work very closely to look at this situation and communicate directly. We all work for one boss, and as long as we get—we need to understand that we're all on the same team and get the information out as best we can. We need to communicate better.

Ms. SOLLER. But the direct contact with allottees is limited to RMAC; is that right, and through Mr.——

Mr. WILLIAMSON. And through our External Affairs Office with liaison with the BIA's office, is my understanding.

Ms. SOLLER. I have no further questions.

Senator MCCAIN. Mr. Williamson, I guess what I get from some of the questioning is that for quite a few years the responsibilities of your office have not been carried out as far as what we think are their statutory obligations as well as what are our moral obligations. Would you agree with that?

Mr. WILLIAMSON. I understand your feelings, yes, sir.

Senator MCCAIN. I appreciate your understanding my feelings, but I wonder if you agree with me.

Mr. WILLIAMSON. I think that we can do a better job; I agree. Yes, sir, I do.

Senator MCCAIN. And I understand you've only been in the office for about a month. I think your associates have been there longer. Do either you or they have any—could you venture an opinion as to why this has been the situation for such a long period of time? Maybe your associates can if you cannot, given your short tenure here—would you venture an opinion?

Mr. MAYBERRY. Only to say, sir, that I do think that there have been very serious problems in getting money to tribes and allottees in years past when systems were designed and had high error rates. An awful lot, and probably too much, was perhaps done too quickly. Over time I think we've sought to improve those areas, and I think that we have made a lot of improvements over three or four years ago.

But, as Mr. Williamson said, we still have plans for and seek to substantially improve the process. We believe there is still a lot that can be done.

Senator MCCAIN. Sir, would you care to comment? You're not required.

Mr. SANT. No, that's fine.

Senator MCCAIN. Thank you.

In several instances in the course of your testimony you stated that you feel you need some legislative help.

Mr. WILLIAMSON. Yes.

Senator MCCAIN. I would hope that we could receive those inputs and recommendations as soon as possible. We intend to start assembling a legislative package sometime within a month or two from now, I would think, so we could have a package, a large package covering a number of areas ready by the fall. I hope that we could get that.

Mr. WILLIAMSON. We'll get that information up to you and work with your staff so we can better move forward in this area. Definitely there's a need.

Senator MCCAIN. Thank you.

I would like to state for the record that you and your associates, frankly, have shown more of a willingness to cooperate than the other two agencies that we have had before this committee.

Although there have been serious problems, I have some reason for optimism that you are willing to tackle these problems. I'm also hopeful that the BIA, under new management, will also. Frankly, I have very seldom experienced the kind of testimony that we got from the BLM yesterday. We are going to have, I think, to get into that in much greater depth, because I think part of the purpose of these hearings is not only to expose what has happened in the past, but perhaps more importantly, far more importantly, chart a new course so that we can fulfill our responsibilities and obligations.

In your case, I'll certainly take your word that you and members of your organization are willing to go forward. I do not have that assurance in the case of the Bureau of Land Management.

I also think it would be appropriate for the record at this time to thank members of the staff who have been heavily involved in this effort: Charles Norman, Randy Fetterolf, Jim Elroy, Fred Merritt, Mary Lou Soller, Andy Klingenstein, Wick Sollers, and John Brandolino.

I might again point out for the record that there were literally hundreds of thousands of pages of documents that were gone over by the staff. We're talking about at least three different Federal bureaucracies that we're dealing with, each with their own subdivisions.

This committee has been working on this issue now for—what would you say, Mr. Ballen, a year?

Mr. BALLEN. Over a year.

Senator MCCAIN. Well over a year, to which we have devoted an enormous amount of money and time and manpower. I think we would not be fulfilling our obligation to the taxpayer if we did not come up with some meaningful changes, both from a legislative viewpoint and also from your viewpoint, Mr. Williamson.

I don't want to see happen as was described by Mr. Leonard Garment, who was the opening witness of these hearings who described our attention to Indian issues as comparable to that of the attention that people in this town give to the 17-year locust; that

once every 17 years they emerge and make a lot of noise and we pay attention and they go away for another 17 years.

I know that it is my intention, and that of Senator DeConcini, and that of Senator Inouye who really was the parent of this committee, the person under whose tutelage this committee was born and came into existence, that we will not allow these issues to submerge back into obscurity.

I think this area that we have been talking about, although incredibly complex and very difficult for people to understand, including this Member, is a vital aspect of our obligations to Native Americans because, if we don't get them the revenues that they deserve from what is really their only asset, and that's their natural resources, I don't see how we can fulfill our obligations to them.

I would appreciate having from you in writing a plan as to how you intend to go about redressing the areas that we have highlighted today.

I am fully aware that there is some disagreement as to the extent of the problem, but at least on your part, from your testimony, there is a recognition that we have a very large problem here.

It would be helpful to this committee if over time—and there's not a big hurry on it—if you would provide us with a plan as to how we intend to not only address the issue in the short term, but make sure that 17 years from now some other Senator and some other head of MMS are not sitting here going over exactly the same problems as we are today. I want to tell you that 17 years ago there was a re-enactment of this, and probably 17 years before that, back for a couple of hundred years.

I thank you all for your participation. I look forward to working with you.

This closes out perhaps the most complex and difficult aspect of this committee's deliberations, but at the same time I think one of the most important ones.

Thank you very much.

The committee stands adjourned until Monday morning at 10 a.m.

Mr. WILLIAMSON. Thank you, Senator.

[Whereupon, at 2:56 p.m., the committee recessed, to reconvene on Monday, May 15, 1989 at 10 a.m.]

APPENDIX

Additional Material Submitted for the Record

December 10,1988

Mineral Management Services
Royalty Management Program
P.O. Box 25165
Denver, Colo. 80225

Concerning:
Lease No. 61208

Dear Mineral Management Services:

Enclosed are copies of three statements that your office sent to me which are dated Feb. 4.1987, Oct. 1,1988 and Nov. 1,1988.

Concerning Feb.4,1987 statement: I noticed that Cotton Petroleum was late in paying some of this and there was no assessment. Also, under rents & royalties and net amount and ower share there are deductions of a toal of $2131.74-(owner share) Why?

Concerning Oct.1,1988 statement: There are deductions of a total of $8,629.44. Why? Also this is the first time I have ever noticed a deduction under Allowance. Will you please itemize tis deduction and why it was deducted. I noticed also, that Cotton Petroleum Corp. was very late on some of this. And that you don't always quote the unit value on statements, or the quanity. Why?

Concerning Nov.1,1988 statement: There was a deduction under allowance in the amount of $2623.59. Please explain.

The Oct 1,1988 & Nov.1,1988 allowance deduction equals to quite a bit for owner share, which has never been allowed before.

Exactly ,what is royalty rate? Your explanation sheet is informative, except the figures that I come up with don't equal your figures. See- Explanation of royalty rate at bottom (copy enclosed)

I will appreciate an answer from you by return mail. I contacted the home agency recently about the above. They say you have the answers to our questions.

Sincerely Yours
Houston Decker

Houston Decker Account No. 806U022641
P.O. Box 374
Pryor, Oklahoma 74362

Rec'd this 12/19/88

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.
1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery (Extra charge)
(Extra charge)

Article Addressed to:
Mineral Management Service

4. Article Number
P709565272

Type of Service:
☐ Registered ☐ Insured
☐ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee

Certified Mail
Mailed 12/14/88
Received by Rene Lee
12/15/88
Received Green Card
by MD 12/19/88

United States Department of the Interior

MINERALS MANAGEMENT SERVICE
ROYALTY MANAGEMENT PROGRAM
P.O. BOX 25165
DENVER, COLORADO 80225

IN REPLY
REFER TO:

DAD/CD/OEA/MS 651

DEC 20 1988

Memorandum

To: Superintendent, Anadarko Agency Office
Bureau of Indian Affairs

From: Chief, Office of External Affairs

Subject: Letter From Mr. Houston Decker, Allottee, Account No. 8060022641

Attached is a letter dated December 10, 1988, that Minerals Management Service (MMS) received from a Mr. Houston Decker, regarding the monthly royalty statements that he receives covering production from his lease. As you are aware, the MMS/BIA Audit Strategy specifies that questions of this nature are to be responded to by the Agency in question and if they are not able to provide the allottee with the necessary information, the specifics of the problem are to be forwarded to MMS for a desk review or audit. We will appreciate you responding to Mr. Decker or preparing the necessary transmittal for response to this office.

By copy of this letter we are advising Mr. Decker of our transfer of his letter to your office. Please keep us advised on the action you ensue on this matter.

Vernon B. Ingraham

Attachment

cc: Mr. Houston Decker
P.O. Box 374
Pryor, Oklahoma 74362

March 23,1988

Oil & Gas Lease Dept.
Anadarko Area Office
Bureau of Indian Affairs
P.O. ~~922~~ 309
Anadarko , Okla. 73005

Concerning Oil & Gas leases:

61208 (Caddo 191(NE¼ 15-9N-11W
61434 (Caddo 194))NW¼ 22-9N-11W
61437 (Caddo 197) E½ NW¼ and W½ NE¼ 27-9N-11W

I received a check from MMS dated March 18, 1988 for $199.98.

What caused this check to drop so low, since preceeding checks in recent months have been quite a bit more?

Also, I have a question about my monthly statements. I've noticed sometimes the sale of gas has been ~~several~~ months before MMS received what was due. One one statment dated 2/4/87, the sale was 7/83 and it didn't reach MMS until 12/31/86 (which is over three years late.

On this same statemant, I notice a lot of minis (-). What is that about. I've noticed the minis (-) on other statements. Why is an owner snare deducted?

Also, when Oil & Gas leases run out, am I to be notified? I would like to know more about what is going on in that area. I've never seen a copy od a lease.

I've noticed on late payments to MMS, that the petroeum companies are not assessed for lat payment.

Also, can you tell me what is going on with Lease no. 60049(caddo 784) 8-10N-13W?

Shouldn't A royalty owner be notified if an oil company hasn't paid what is due?

Thank You For Your Help.

Sincerely Yours

Houston Becker

Houston Becker... Account No.-8060022541
P.O. Box 374
Pryor, Oklahoma 74362
Phone (918) 325-2703

Sa Checks
Mg No -90 +91
Statement Date 4/6/88

Sa Check #
2065.2
Recd 3/30/88
Date 3/25/88

Sa Statement Date
4-6-88

Concerning the Letter written March 23,1988 to Oil & Gas Lease Dept. Anadarko Area Office, BIA P.O. Box 309, Anadarko, Okla. 73005

As of April 13,1989, I didn't receive an answer to this letter. On October 26,1988, I made a trip to the Above office. Velma Decker and Joe L Decker also attended this meeting. We talked to Max Standing and Dave Keel concerning the letter. They didn't have the answers and refered us to MMS in Colorado, but didn't tell us how to do that, They said at Anadarko, that they didn't get the letter dated 3/23/88

Sincerely

Houston "Hugh" Decker

P.S. See Letter to MMS dated 12/10/88 and their answer dated 12/20/88 addressed to the Superintendent at Anadarko Area Office, which I received a copy. As of April 13,1989, I have yet to hear from Anadarko concerning the MMs letter to them.

Alice Serawop Jones
P. O. Box 274
Fort Duchesne, Utah 84026

Yvonne Gardner Curry
519 E. 700 N. (Box 95-3)
Roosevelt, Utah 84066

June 29, 1988

Honorable Howard Nielsen, Congressman
1229 Longsworth House Office Building
Washington, D. C. 20515

Dear Congressman Nielsen:

We are individual members of the Ute Indian Tribe of Fort Duchesne, Utah, where you were recently honored in a Tribal Ceremony. It is evident that you have a true concern for the welfare of our Indian people.

It is with this thought in mind that we are asking for you assistance to help resolve some unanswered question regarding our Oil and Gas leases. We have inherited interests in lands that are at the present time leases to different Oil and Gas companies. We are only two of perhaps hundreds of other individuals that are in the same situation.

We have met with Superintendent Perry Baker and Petroleum Engineer Ken Young, and they agree that we should have an audit of the Oil and Gas leases that are on our property. (See attachment #1.)

The information that we receive from the Mineral Management Services in Lakewood, Colorado, does not, in our opinion have a check and balance in the Production and Payment system. The information that we do receive is very confusing and it has taken us a long time to decipher the information that these reports contain. Because we do not receive these reports consistently, we cannot compare them with other reports for a verification of accuracy.

We have the same concerns as stated in the Superintendent's request and we are including copies of the reports which shows our confusions and concerns:

1. Royalties shown on sales, but negative income. (See attachment #2)

2. Established royalty rates fluxuating. (See attachment 3 and 4)

3. Excessive and unfair recoupment from Lessors share of the royalties. (See attachment #5)

4. Check and Balance system does not check and balance. (See attachment #6)

We were informed that in some instances the Code of Federal Regulations give the Oil companies certain rights to recoup monies from the Lessor's share of the

(Letter dated June 29, 1988 to Congressman Nielsen)

the royalties and we feel that unless these conditions are so stated in the leases, that no Oil Company, the Federal Government or anyone else can change or abrogate these leases, without the owners consent. If such is the case, then these regulations must be changed, as this is contrary to Indian Self Determination.

We would greatly appreciate any help you can give us in hastening our requested audit of the Oil and Gas leases, as quickly as possible, to help the system become more informational with an acceptable Check and Balance system that can be understood by all people concerned.

Respectfully yours,

Alice S. Jones
Alice Serawop Jones
Tribal Roll Number 584

Yvonne Gardner Curry
Ivonne Gardner Curry
Tribal Roll Number 421

cc: Supt., U. & O. Agency
Mineral Management Services
Phoenix Area Office

ATTACHMENT #1

UNITED STATES GOVERNMENT

memorandum

DATE: JUN 1

REPLY TO ATTN OF: Superintendent, Uintah & Ouray Agency

SUBJECT: Audit Request - Yvonne G. Curry and Alice S. Jones

TO: Area Director
Phoenix Area Office
Attention: Jim Crowther

During the last couple of months I have had an increase in the number of Allottees that have asked for information regarding their explanation of payment reports that are sent out by the BIA. As I have had my staff look at the forms there seems to be some unanswered questions, it appears that the Allottees are not getting paid the full value for their oil and gas resources. I have enclosed two audit requests for the above individuals along with copies of the explanation of payments they have received during the past years. The questions that these individuals have, and I feel that it is an audit function to answer. They are:

1. In some cases the EOP shows a quantity of either oil or gas, but then goes on to show no royalty or payment to the Allottee. Why would the company report a quantity and not send in the payment to match the quantity sold?

2. The royalty rate on the lease may be 16.6667%, in some cases the royalty on the report may vary from 16.6667, 16.6666, 16.6664, or even 8.88 and 8.33 percent. Why is the company allowed to report different royalty rates for the same lease?

3. In most cases it appears that the companies are allowed to claim more negative entries than positive entries. When a report goes to the Allottee it shows all the money that was paid for the volume of product sold then it starts to deduct from the total with negative entries. By the time the negative and positive entries are adjusted the net amount is zero.

4. The final concern that I have is that in adding up the lease totals and checks for a years time it does not appear that the two number match. Why is it that the lease totals is more than the check totals in every case.

In order to enable me to answer these questions for these individuals and all Allottees on this Reservation I am requesting that you initiate an audit to be completed on the leases for these two individuals. Attached is a list of the leases these individuals have an interest in and their EOPs. If you need additional information please contact Ken Young, Petroleum Engineer at U&O Agency.

cc: MMS.
Agency Chrono.
Realty Chrono.
O&G File

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114

UINTAH & OURAY AGCY
BIA-UINTAH & OURAY AGENCY
REALTY BRANCH (OIL & GAS)
FT DUCHESNE, UT 84026

DATE RUN: 9/27/91 14:08:10 | STATEMENT OF OIL & GAS RECEIPTS & DISBURSEMENTS | PROGRAM OG400 | PAGE 1
UINTAH & OURAY AGCY

BIA

ATTACHMENT #2

UO
NAME ALICE S JONES
ADDRESS BOX 274
CITY/STATE/ZIP FT. DUCHESNE UT 84026

ACCT# 687U000584

LEASE NO.	PR CD	SA.E MO	DUE DT TC	DT RCV BY	DT CR MMS	DT TIM	QUANTITY	UNIT VALUE	RYLTY RT	LEASE INFORMATION RENT & ROYALTIES	ASSESSMENT	ALLOWANCE	NET AMOUNT	OWNER INFORMATION OWNER INTEREST	OWNER SHARE
ALLOTMENT 0422 00 ALLOTMENT INTEREST .5000															
PAYOR 10115 ***** PAYOR NAME NOT ON FILE *															
01791	01	1266	013187	020287	030387		175.81	13.24	.1667	388.27			388.27	.250000	48.53
01791	03	1266	013187	020287	030387		92.75	2.68	.1667	56.51			56.51	.250000	7.06
01791	04	1266	013187	020287	030387		13.88	3.89	.1667	8.53			8.53	.250000	1.07
01791	07	1266	013187	020287	030387		328.97	0.23	.1666	36.22		25.48-	12.74	.250000	1.59
01791	01	167	022687	030287	033087		153.28	15.03	.1667	420.26			420.26	.250000	52.55
01791	04	167	022687	030287	033087		13.75	4.37	.1666	10.02			10.02	.250000	1.25
01791	07	167	022687	030287	033087		209.89	0.26	.1666	27.22		18.15-	9.07	.250000	1.13
01791	01	267	033187	033187	050787		264.43	16.42	.1667	723.57			723.57	.250000	90.45
01791	04	267	033187	033187	050787		17.00	4.37	.1666	12.38			12.38	.250000	1.55
01791	07	267	033187	033187	050787		218.72	0.31	.1667	33.45		22.30-	11.15	.250000	1.39
PAYOR 43460 SHELL OIL CO															
01791		884	092884	020687	030387		.00	0.00	.0000	.00	.24		.24	.250000	.03
PAYOR 73985 UTEX OIL COMPANY															
01791	01	766	063186	031287	050787		731.85	10.74	.1667	1310.02			1310.02	.250000	163.75+
01791	03	766	063186	031287	033087		503.88	3.12	.1667	262.31			262.31	.250000	32.78
01791	04	766	063186	031287	050787		4.28	4.08	.1664	2.90			2.90	.250000	.36
01791	07	766	063186	062586	033087		1458.75-	0.27	.1667	.00		65.25-	65.25-	.250000	8.16-
01791	07	766	063186	031287	050787		2189.75	0.27	.1667	97.88			97.88	.250000	12.24
01791	01	866	0920	031287	040387		.00	0.00	.0000	1310.02-			1310.02-	.250000	163.75-
01791	03	866	092065	031287	040387		.00	0.00	.0000	81.26-			81.26-	.250000	10.25-
01791	04	866	092086	031287	040387		.00	0.00	.0000	2.90-			2.90-	.250000	.36-
01791	07	866	092066	031287	040387		.00	0.00	.0000	13.04-			13.04-	.250000	1.62-
*ALLOT TOTALS							9464.67			1983.72	.24	131.18-	1852.78		231.59
*LEASE TOTALS							9464.67			1983.72	.24	131.18-	1852.78		231.59
ALLOTMENT 0417 00 ALLOTMENT INTEREST 1.0000															
PAYOR 10115 ***** PAYOR NAME NOT ON FILE *															
01856	01	1266	013187	020287	030387		148.04	15.18	.1667	320.74			320.74	.011904	3.82
01856	03	1266	013187	020287	030387		15.00	3.64	.1667	8.11			8.11	.011904	.11
01856	04	1266	013187	020287	030387		2.16	3.70	.1667	1.35			1.35	.011904	.02
01856	07	1266	013187	020287	030387		222.22	0.23	.1665	25.96		17.30-	5.66	.011904	.10
01856	01	167	022687	022887	033087		274.56	15.83	.1667	726.90			726.90	.011904	8.65
01856	03	167	022687	022887	033087		15.25	3.65	.1667	8.27			8.27	.011904	.11
01856	04	167	022687	022887	033087		10.96	4.50	.1665	8.19			8.19	.011904	.10
01856	07	167	022687	030287	033087		377.61	0.26	.1666	22.71		15.14-	7.57	.011904	.09
01856	01	267	033187	033187	050787		287.56	16.47	.1667	814.88			814.88	.011904	9.70
01856	03	267	033187	033187	050787		72.13	3.53	.1666	43.04			42.04	.011904	.51
01856	04	267	033187	033187	050787		17.31	4.45	.1666	12.84			12.84	.011904	.15
01856	07	267	033187	033187	050787		228.35	0.30	.1667	34.32		22.88-	11.44	.011904	.14
PAYOR 43460 SHELL OIL CO															
01856		884	092884	020687	030387		.00	0.00	.0000	.00	.16		.16	.011904	.00
PAYOR 73985 UTEX OIL COMPANY															
01856	01	766	063186	063086	033087		162.65	10.45	.1667	283.17			283.17	.011904	3.37

PRODUCT CODES
01 OIL 03 PROCESSED (RESIDUE) GAS 04 UNPROCESSED (WET) GAS 07 GAS PLANT PRODUCTS

1673.11
1407.92
3791.64
1407.92
JOTHE
#7860.07
MAKES A NEGATIVE BALANCE WHAT HAPPENED

0000742

UINTAH & OURAY AGCY
BIA-UINTAH & OURAY AGENCY
REALTY BRANCH (OIL & GAS)
FT DUCHESNE, UT 84026

DATE RUN: 5/25/88 10:18:47:10 — STATEMENT OF OIL & GAS RECEIPTS & DISBURSEMENTS — UINTAH & OURAY AGCY — PROGRAM OG400 — PAGE 1

ATTACHMENT #3

UO
NAME ALICE S JONES
ADDRESS P.O. BOX 584
CITY/STATE/ZIP FT. DUCHESNE UT 84026

ACCT# 687U000584

PAYMENT INFORMATION: LEASE PR SALE DUE DT OT ACV DT CR NO. CD MCVR TO MMS BY MMS TO IIM	QUANTITY	UNIT VALUE	RYLTY RT	LEASE INFORMATION: RENT & ROYALTIES	ASSESSMENT	ALLOWANCE	OWNER INFORMATION: NET AMOUNT	OWNER INTEREST	OWNER SHARE
ALLOTMENT 0422 00 ALLOTMENT INTEREST .5000									
PAYOR 10555 AMERICAN NATURAL RESOURCES									
01791 01 388 043088 050288 052088	684.89	18.42	.1667	1846.11			1846.11	.250000	205.76
01791 04 388 043088 050288 052088	560.88	4.36	.1667	407.29			407.29	.250000	50.91
*ALLOT TOTALS	1245.77			2053.40			2053.40		256.67
*LEASE TOTALS	1245.77			2053.40			2053.40		256.67
ALLOTMENT 0417 00 ALLOTMENT INTEREST 1.0000									
PAYOR 10555 AMERICAN NATURAL RESOURCES									
01556 01 388 043088 050288 052088	262.00	14.40	.1667	580.83			580.83	.011804	6.91
01556 04 388 043088 050288 052088	304.26	4.28	.1667	217.40			217.40	.011804	2.59
*ALLOT TOTALS	566.26			798.23			798.23		9.50
*LEASE TOTALS	566.26			798.23			798.23		9.50
ALLOTMENT 0263 00 ALLOTMENT INTEREST 1.0000									
PAYOR 17555 CONOCO, INC									
03010 04 388 022888 023188 052088	.00	0.00	.0000	234.64-			234.64-	.070000	16.42-
*ALLOT TOTALS (IN SUSPENSE)	.00			234.64-			234.64-		16.42-
*LEASE TOTALS (IN SUSPENSE)	.00			234.64-			234.64-		16.42-
ALLOTMENT 0521 00 ALLOTMENT INTEREST 1.0000									
PAYOR 17555 CONOCO, INC									
03011 04 388 042888 042888 042888	.00	0.00	0000	.01-			.01-	.151078	.00
03011 04 388 022888 042888 042888	545.00	2.45	.1401-	187.14-			187.14-	.151078	26.22-
03011 04 388 033188 042888 042888	1053.77	2.45	.1853-	478.37-			478.37-	.151078	67.07-
03011 04 388 022888 023188 052088	.00	0.00	0000	268.43-			268.43-	.151078	45.08-
03011 04 388 033188 033188 052088	2825.83	2.45	.1667	1154.02			1154.02	.151078	174.35
03011 04 388 022888 041488 052088	.00	0.00	0000	268.43			268.43	.151078	45.08
03011 04 388 033188 041488 052088	305.49	1.24	1.8092	725.21			725.21	.151078	109.56
*ALLOT TOTALS	4730.09			1213.71			1213.71		183.37
*LEASE TOTALS	4730.09			1213.71			1213.71		183.37

INTEREST RATE CHANGES FROM THE 16 2/3 %

PAYMENT NOT POSTED FOR 2 MONTHS
POSTED OF 30 DAYS

PRODUCT CODES: 01 OIL — 04 UNPROCESSED (WET) GAS

BIA-UINTAH & OURAY AGCY
BIA-UINTAH & OURAY AGENCY
REALTY BRANCH (OIL & GAS)
FT DUCHESNE, UT 84026

DATE RUN 12/11/87 07:00:13:00 — STATEMENT OF OIL & GAS RECEIPTS & DISBURSEMENTS — PROGRAM OG400 — PAGE 1
UINTAH & OURAY AGCY

ATTACHMENT #4

NAME UO
YVONNE G CURRY
ADDRESS PO BOX 95-3
CITY/STATE/ZIP ROOSEVELT UT 84066

ACCT# 687U000421

LEASE PR SALE DUE DT DT RCV DT TR AC CD MCVR TO MMS BY MMS TO IIM	QUANTITY	UNIT VALUE	RLTY RT	RENT & ROYALTIES	ASSESSMENT	ALLOWANCE	NET AMOUNT	OWNER INTEREST	OWNER SHARE
ALLOTMENT MO566 OO ALLOTMENT INTEREST 1.0000 — FANNIE									
PAYOR 44362 PENNZOIL PRODUCING CO,-ONSHORE									
00690 01 987 103187 110287 120587	37.02	18.66	.1667	115.14			115.14	.040123	4.62
00690 07 987 093087 110287 120587	90.33	0.25	.1657	3.78			3.78	.040123	.15
*ALLOT TOTALS	127.35			118.92			118.92		4.77
*LEASE TOTALS	127.35			118.92			118.92		4.77
ALLOTMENT MO4O5 OO ALLOTMENT INTEREST 1.0000 - GUY									
PAYOR 12825 BADGER OIL CORPORATION									
03652 01 987 103187 110287 120587	99.68	19.50	.2500	485.86			485.86	.040123	19.50
PAYOR 19375 BARENCO, INC									
03653 04 987 103187 110287 120587	1250.00	0.91	.0156	17.75			17.75	.040123	.71
*ALLOT TOTALS	1349.68			503.71			503.71		20.21
*LEASE TOTALS	1349.68			503.71			503.71		20.21
ALLOTMENT MO4O5 OO ALLOTMENT INTEREST 1.0000 - GOMER									
PAYOR 12825 BADGER OIL CORPORATION									
03665 01 987 103187 110287 120587	106.10	18.83	.2800	569.94			569.94	.006667	3.81
PAYOR 19375 BARENCO, INC									
03665 04 987 103187 110287 120587	893.00	0.78	.0175	12.25			12.25	.006667	.08
*ALLOT TOTALS	1007.10			582.19			582.19		3.89
*LEASE TOTALS	1007.10			582.19			582.19		3.89
ALLOTMENT MO4O1 OO ALLOTMENT INTEREST 1.0000 - CLYDE									
PAYOR 12825 BADGER OIL CORPORATION									
03668 00 1284 (103187 235487) 101387	.00	0.00	.0000	800.00			800.00-	.010030	(8.00)
03668 01 787 093187 063187 102087	144.55	19.57	.2800	792.20			792.20	.010030	7.95
03668 01 987 103187 110287 120587	170.25	18.84	.2800	898.68			898.68	.010030	9.01
PAYOR 19375 BARENCO, INC									
03668 04 987 103187 110287 120587	107.92	0.79	.2800	23.90			23.90	.010030	.24
*ALLOT TOTALS	422.66			914.78			914.78		9.18
*LEASE TOTALS	422.66			914.78			914.78		9.18

PRODUCT CODES
1 OIL 07 GAS PLANT PRODUCTS 04 UNPROCESSED (WET) GAS 00 RENT

ROYALTY RATE .28%

EXCESSIVE ROYALTY PAYMENT

D000682

UINTAH & OURAY AGCY
BIA-UINTAH & OURAY AGENCY
REALTY BRANCH (OIL & GAS)
FT DUCHESNE, UT 84026

DATE RUN: 10/16/87 14:14:25:90 — STATEMENT OF OIL & GAS RECEIPTS & DISBURSEMENTS — UINTAH & OURAY AGCY — PROGRAM OG400 — PAGE 1

ATTACHMENT #5

NAME UO
ADDRESS YVONNE G CURRY
CITY/STATE/ZIP PO BOX 95-3 ROOSEVELT UT 84066

ACCT# 6870000421

LEASE NO.	PR	CD	SALE MO/YR	DUE DT TO MMS	RCV DT BY MMS	CK DT TO IIM	QUANTITY	UNIT VALUE	RYLTY RT	RENT & ROYALTIES	ASSESSMENT	ALLOWANCE	NET AMOUNT	OWNER INTEREST	OWNER SHARE
ALLOTMENT MO586 OO ALLOTMENT INTEREST 1.0000 – FANNIE NICK															
PAYOR 44352 PENNZOIL PRODUCING CO.-ONSHORE															
00E90	01		787	083187	083187	101387	31.52	15.91	.1667	104.58			104.58	.040123	4.20
00E90	07		587	063087	083187	101387	1.00-	0.35	.1714	.06-			.06-	.040123	.00
00E90	07		887	073187	083187	101387	93.00	0.22	.1665	3.10			3.10	.040123	.12
*ALLOT TOTALS							113.82			107.62			107.62		4.32
*LEASE TOTALS							113.82			107.62			107.62		4.32
ALLOTMENT MO406 OO ALLOTMENT INTEREST 1.0000 – GUY															
PAYOR 12625 BADGER OIL CORPORATION															
03853	01		687	073187	073187	090187	64.06	18.83	.2500	288.41			288.41	.040123	11.97
03853	00	1284	013185	020485		101387	.00	0.00	.0000	569.07-			569.07-	.040123	23.64-
PAYOR 19375 DARENCO, INC.															
03853	04		787	083187	090187	101387	1160.00	0.91	.0156	16.46			16.46	.040123	.68
*ALLOT TOTALS (IN SUSPENSE)							1224.06			274.20-			274.20-		11.01-
*LEASE TOTALS (IN SUSPENSE)							1224.06			274.20-			274.20-		11.01-
ALLOTMENT MO405 OO ALLOTMENT INTEREST 1.0000 – GOMER															
PAYOR 12625 BADGER OIL CORPORATION															
03865	01		687	073187	073187	090187	99.13	18.63	.2800	517.10			517.10	.006687	3.46
03865	00	1284	013185	020485		101387	.00	0.00	.0000	900.00-			900.00-	.006687	2.67-
PAYOR 19375 DARENCO, INC.															
03865	04		787	083187	090187	101387	1668.00	1.01	.0175	29.57			29.57	.006687	.20
*ALLOT TOTALS							1767.13			146.67			146.67		.99
*LEASE TOTALS							1767.13			146.67			146.67		.99
ALLOTMENT MO407 OO ALLOTMENT INTEREST 1.0000 – CLYDE															
PAYOR 12625 BADGER OIL CORPORATION															
03866	01		687	073187	073187	090187	126.90	18.58	.2800	660.51			660.51	.010030	6.63
03866	00	1284	013185	020485		101387	.00	0.00	.0000	800.00-			800.00-	.010030	8.02-
PAYOR 19375 DARENCO, INC.															
03866	04		787	083187	090187	101387	146.16	0.97	.2709	39.80			39.80	.010030	.40
*ALLOT TOTALS (IN SUSPENSE)							273.06			39.69-			39.69-		.39-
*LEASE TOTALS (IN SUSPENSE)							273.06			39.69-			39.69-		.39-

PRODUCT CODES
01 OIL — 07 GAS PLANT PRODUCTS — 00 RENT — 04 UNPROCESSED (WET) GAS

EXCESSIVE RECOUPMENT

Form 5-151b
(Jan. 1948)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

LEASE No. 14-20-H62-3011

[illegible] No. 149

APPLICANT 5-A

Reservation
of Uintah and Ouray, State of Utah, Heirs of allottee No. 521 Unc.

(roll No. ....), of the Ute Tribe of Indians,

lessor, and Continental Oil Company, P. O. Box 1267

of Ponca City, State of Oklahoma 74601,
lessee:

WITNESSETH $896.94 cf

1. Lessor, in consideration of a cash bonus of ~~$883.96~~, paid to the payee designated by the Area Director, receipt of which is hereby acknowledged, and in consideration of rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and natural gas deposits including helium gas, carbon dioxide gas, and sulphur gas in or

under the following-described tracts of land situated in the county of Uintah State of Utah, and more particularly described as follows:

Township 8 South, Range 21 East, S.L.M.
Section 35: W½SW¼

Township 9 South, Range 21 East, S.L.M.
Section 2: Lot 4, SW¼NW¼

containing 161.03 acres more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, roads, telegraph and telephone lines, pipelines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment hereof for the term of 10 years from and after the approval hereof by the Secretary of the Interior and as much longer thereafter as oil and/or gas is produced in paying quantities from said land.

2. The term "oil and gas supervisor" as employed herein shall refer to such officer or officers as the Secretary of the Interior may designate to supervise oil and gas operations on Indian lands. The term "superintendent" as used herein shall refer to the superintendent or other official in charge of the Indian Agency having jurisdiction over the lands leased.

3. In consideration of the foregoing, the lessee hereby agrees:

(a) Bond.—To furnish such bond as may be required by the regulations of the Secretary of the Interior, with satisfactory surety, or United States bonds as surety therefor, conditioned upon compliance with the terms of this lease.

(b) Wells.—(1) To drill and produce all wells necessary to offset or protect the leased land from drainage by wells on adjoining lands or lands of the lessor leased at a lower royalty rate, or in lieu thereof, to compensate the lessor in full each month for the estimated loss of royalty through drainage: *Provided*, That during the period of supervision by the Secretary of the Interior, the necessity for offset wells shall be determined by the oil and gas supervisor and payment in lieu of drilling and production shall be with the consent of, and in an amount determined by the Secretary of the Interior; (2) at the election of the lessee to drill and produce other wells: *Provided*, That the right to drill and produce such other wells shall be subject to any system of well spacing or production allotments authorized and approved under applicable law or regulations, approved by the Secretary of the Interior and affecting the field or area in which the leased lands are situated; and (3) if the lessee elects not to drill and produce such other wells for any period the Secretary of the Interior may, within 10 days after due notice in writing, either require the drilling and production of such wells to the number necessary, in his opinion, to insure reasonable diligence in the development and operation of the property, or may in lieu of such additional diligent drilling and production require the payment on and after the first anniversary date of this lease of not to exceed $1 per acre per annum, which sum shall be in addition to any rental or royalty hereinafter specified.

Attachment 5-A

(3)

(c) Rental and royalty.—To pay, beginning with the date of approval of the lease by the Secretary of the Interior, a rental of $1.25 per acre per annum in advance during the continuance hereof, the rental so paid for any one year to be credited on the royalty for that year, together with a royalty of 16⅔ percent of the value or amount of all oil, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased herein, save and except oil, and/or gas used by the lessee for development and operation purposes on said lease, which oil or gas shall be royalty free. During the period of supervision, "value" for the purposes hereof may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the oil and gas supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary, be deemed mere evidence of or conclusive evidence of such value. When paid in value, such royalties shall be due and payable monthly on the last day of the calendar month following the calendar month in which produced; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor: *Provided*, That the lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced: *And provided further*, That the lessee shall be in no manner responsible or held liable for loss or destruction of such oil in storage caused by acts of God. All rental and royalty payments, except as provided in sections 8(a) and 4(c) shall be made by check or draft drawn on a solvent bank, open for the transaction of business on the day the check or draft is issued, to the payee designated by the Area Director. It is understood that in determining the value for royalty purposes of products, such as natural gasoline, that are derived from treatment of gas, a reasonable allowance for the cost of manufacture shall be made, such allowance to be two-thirds of the value of the marketable product unless otherwise determined by the Secretary of the Interior on application of the lessee or on his own initiative, and that royalty will be computed on the value of gas or casinghead gas, or on the products thereof (such as residue gas, natural gasoline, propane, butane, etc.), whichever is the greater.

(d) Monthly statements.—To furnish to the oil and gas supervisor monthly statements in detail in such form as may be prescribed by the Secretary of the Interior, showing the amount, quality, and value of all oil, gas, natural gasoline, or other hydrocarbon substances produced and saved during the preceding calendar month as a basis upon which to compute, for the superintendent, the royalty due the lessor. The leased premises and all wells, producing operations, improvements, machinery, and fixtures thereon and connected therewith and all books and accounts of the lessee shall be open at all times for the inspection of any duly authorized representative of the Secretary of the Interior.

(e) Log of well.—To keep a log in the form prescribed by the Secretary of the Interior of all the wells drilled by the lessee showing the strata and character of the formations passed through by the drill, which log or a copy thereof shall be furnished to the oil and gas supervisor.

(f) Diligence, prevention of waste.—To exercise reasonable diligence in drilling and operating wells for oil and gas on the lands covered hereby, while such products can be secured in paying quantities; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely all wells before abandoning the same and to effectually shut off all water from the oil or gas-bearing strata; not to drill any well within 200 feet of any house or barn now on the premises without the lessor's written consent approved by the superintendent; to carry out at the expense of the lessee all reasonable orders and requirements of the oil and gas supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; to bury all pipelines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; to pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

(g) Regulations.—To abide by and conform to any and all regulations of the Secretary of the Interior now or hereafter in force relative to such leases including 30 CFR 221: *Provided*, That no regulations hereafter approved shall effect a change in rate of royalty or annual rental herein specified without the written consent of the parties to this lease.

(h) Assignment of lease.—Not to assign this lease or any interest therein by an operating agreement or otherwise nor to sublet any portion of the leased premises before restrictions are removed, except with the approval of the Secretary of the Interior. If this lease is divided by the assignment of an entire interest in any part of it, each part shall be considered a separate lease under all the terms and conditions of the original lease. The provisions of this section will not operate to abridge or modify any of the rights of the land or royalty owners under section 9 of this lease.

4. The lessor expressly reserves:

(a) Disposition of surface.—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, such disposition to be subject at all times to the right of the lessee herein to the use of so much of said surface as is necessary in the extraction and removal of the oil and gas from the land herein described.

(b) Use of gas.—The right to use sufficient gas free of charge for all stoves and inside lights in the principal dwelling house on said lands by making connection at his own expense with the well or wells thereon, the use of such gas to be at the lessor's risk at all times.

(c) Royalty in kind.—The right to elect on 30 days' written notice to take lessor's royalty in kind.

5. Surrender and termination.—The lessee shall have the right at any time during the term hereof to surrender and terminate this lease or any part thereof upon the payment of the sum of one dollar and all rentals, royalties, and other obligations due and payable to the lessor; and in the event restrictions have not been removed, upon a showing satisfactory to the Secretary of the Interior that full provision has been made for conservation and protection of the property and the proper abandonment of all wells drilled on the portion of the lease surrendered, the lease to continue in full force and effect as to the lands not so surrendered. If this lease has been recorded lessee shall file a recorded release with his application to the superintendent for termination of this lease.

6. Cancelation and forfeiture.—When, in the opinion of the Secretary of the Interior, there has been a violation of any of the terms and conditions of this lease before restrictions are removed, the Secretary of the Interior shall have the right at any time after 30 days' notice to the lessee, specifying the terms and conditions violated, and after a hearing, if the lessee shall so request within 30 days of receipt of notice, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land: *Provided*, That after restrictions are removed the lessor shall have and be entitled to any available remedy in law or equity for breach of this contract by the lessee.

0001229

UINTAH & OURAY AGCY
BIA-UINTAH & OURAY AGENCY
ROYALTY BRANCH (OIL & GAS)
FT DUCHESNE, UT 84026

DATE RUN: 5/20/87 14:06:52:40 — STATEMENT OF OIL & GAS RECEIPTS & DISBURSEMENTS — UINTAH & OURAY AGCY — PROGRAM OG400 — PAGE 4

ATTACHMENT #6

NAME: UO ALICE S JONES
ADDRESS: BOX 274
CITY/STATE/ZIP: FT. DUCHESNE UT 84026

ACCT# 687U000584 (CONTINUED)

LEASE NO.	PR CD	SALE CODE	EFF DT MO/YR	ACT CD MMS	DLY TRN TO IIM	QUANTITY	UNIT VALUE	RLTY RT	RENT & ROYALTIES	ASSESSMENT	ALLOWANCE	NET AMOUNT	OWNER INTEREST	OWNER SHARE
ALLOTMENT 0284 CO ALLOTMENT INTEREST 1.0000														
PAYOR 17652 CONOCO, INC.														
03016 00 587			063087	043687	050787	.00	0.00	.0000	202.09			202.09	.150000	30.31
PAYOR 17655 CONOCO, INC														
03016 04 1285			013187	C3C287	030387	4789.04	2.43	.1331	1552.76			1552.76	.160000	248.44
03016 04 1e7			022687	030287	033087	4819.04	2.48	.1667	1963.62			1963.62	.160000	314.16
07C16 04 287			022187	033187	C503a7	2601.98	2.48	.1667	1060.28			1060.28	.160000	169.64
*ALLOT TOTALS						12220.06			4778.75			4778.75		764.59
*LEASE TOTALS						12220.06			4778.75			4778.75		764.59
ALLOTMENT M0E31 CO ALLOTMENT INTEREST 1.0000														
PAYOR 25362 GRAHAM/SPG-82 JOINT VENTURE														
03C30 00 587			063087	04C487	050787	.00	0.00	.0000	85.58			85.58	.004151	.40
PAYOR 25364 GRAHAM ENERG LTD.														
03C30 01 1286			013187	013087	030387	84.68	11.15	.1667	175.95			175.95	.004151	.72
03C30 01 1e7			022687	030487	033087	84.46	13.37	.1667	188.21			188.21	.004151	.78
03C30 01 287			022187	033187	050787	90.35	14.96	.1667	225.28			225.28	.004151	.94
03C30		7A6	052186	041687	C51187	.00	0.00	.0000	.00	.26		.26	.004151	.00
*ALLOT TOTALS						269.49			685.02	.26		685.28		2.85
*LEASE TOTALS						269.49			685.02	.26		685.28		2.85
**PAYMENT TOTALS						47299.97			20650.11	.66	165.52-	20485.25		2538.28

DISBURSEMENTS FROM IIM ACCOUNT FROM 3/15/87 TO 3/26/87

DATE	CHECK NO.	AMOUNT
**PAYMENT TOTALS	0	$ .00

OWNERS SHARE BUT NO CHECK

PRODUCT CODES
02 UNPROCESSED (WET) GAS
01 OIL

Alice Serawop Jones
P. O. Box 274
Fort Duchesne, Utah 84026
801 - 722-1290

Yvonne Gardner Curry
519 E. 700 N. (Box 95-3)
Roosevelt, Utah 84066
801 - 7223286
March 30, 1989

Ms. Mary Lou Soller, Senior Investigative Counsel
Special Committee on Investigations
Senate Select Committee on Indian Affairs
901 Hart Office Building
Washington, D. C. 20510

Dear Ms. Soller:

In the latter part of 1988 our husbands had the opportunity to meet with you when you were at the Uintah and Ouray Reservation, Fort Duchesne, Utah. They were meeting with Superintendent Baker and Oil Engineer Ken Young, with concerns on an audit of our oil interests in approximately 13 different oil wells.

In June 1988 we requested, through the Superintendent, that an audit be made on our leases. In August we received a copy of a memorandum dated August 8, 1988, stating that our audits had been approved and accepted on July 22, 1988. At the present time we have not received any reports from MMS on the progress or probable dates of completion of the audits. In fact, we have never received a reply to our letter to MMS dated October 6, 1988. It has only been through our persistence and constant contact with the BIA here on our Reservation that we have received any information at all.

Since about April 1988 we have been attempting to find a logical explanation as to why our oil royalties have decreased approximately 80%. We understand and realize that due to the drop in oil and gass prices that we would have a normal decrease in royalties, but to all appearances an 80% drop in royalties is far too excessive.

In the process of conferring with different Agencies, it was brought to our attention that approximately two years ago MMS changed the reporting systems of the oil companies. Up to that time all production reports were made directly to the BLM and copies sent to MMS along with payment that were due. After that time all payment and production reports were sent directly to MMS who in turn then sent reports to BLM.

In view of the above information, it is our opinion that a true and independent audit cannot be made, as there is no check and balance system and that all pertinent documents will originate in the MMS system.

We were also informed that we would be paid back interest monies on all of the royalties that were held over the prescribed time limit and that these payments would be made in April or May 1989. To date we have not received any further information on these payments.

Letter to Mary Lou Soller, dated March 30, 1989

We are requesting your assistance in resolving the above stated matters. We would also like for you to institute a better check and balance system and a better reporting system to the individual Lessors on Indian Reservations, in the MMS system.

Respectfully yours,

Alice Serawop Jones

Alice Serawop Jones
Tribal Roll Number 584

Yvonne Gardner Curry

Yvonne Gardner Curry
Tribal Roll Number 421

cc: Supt. U & O Agency
Phoenix Area Office
Mineral Management Services
Sen. Dennis DeConcini
H. Nielsen, congressman

encls.: copy ltr to MMS dtd 10/6/88
copy ltr to H. Nielsen dtd 6/29/88

TESTIMONY OF MARY LIMPY

TO THE UNITED STATES SENATE

SPECIAL COMMITTEE ON INVESTIGATIONS

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

My name is Mary Limpy. I am a citizen of the Cheyenne-Arapaho Tribe, and I reside in Oklahoma City, Oklahoma. I own royalty interests in Indian trust allotments with minerals included. I own interests in the following allotments: Mist Allotment in Dewey County, Oklahoma; Young Buffalo Allotment in Dewey County, Oklahoma; Sheep Allotment in Dewey County, Oklahoma; and Walking Woman Allotment in Custer County, Oklahoma. Three of these allotments have producing oil or natural gas wells. The Concho Agency of the Bureau of Indian Affairs handles my mineral interests and gives out my checks to me.

I am the sole support of my three young children. These royalties are my only source of income which I use to support my children. I cannot receive federal or state welfare assistance because I own these royalty interests.

My checks stopped coming sometime in May of 1983. I called the Concho Agency to see why, but was given no information. I started calling on a regular basis but was unable to learn the source of the problem or when it would be remedied. I have been evicted several times because I could not pay the rent. My children and I have had to live in my van for periods of time after each eviction. I have been unable to celebrate Christmas and have been unable to celebrate my children's birthdays. Two years ago, the state took custody of my children. I feel strongly that if I had been receiving my royalty checks in the correct amounts and in a timely manner, I would not have accumulated such large debts and would not have been faced with so many evictions, and that I could have kept my children.

I began receiving royalty checks again sometime in September, 1983. The checks come on an irregular basis, and I do not know when to expect them. I do not get my royalty checks right after the gas or oil is sold. I get my checks sometimes 4 to 7 months later. Recently, it has been about 4 months later.

At first, I never received any explanction of my royalty payments. Now, a few weeks after I receive my check, I get some kind of report, but it is hard to understand and really does not explain to me how I am getting paid for my royalties. I used to be able to tell were the royalties were coming from and compare it to my checks because the checks used to have the allotment or lease number on them and I could compare it

to the report, but now I have no way to identify from the check which allotment the money is from to make a comparison. The explanation reports are too complicated and confusing. It would be helpful if the explanation reports would come at the same time as the checks, and if the reports were easier to understand.

In 1988, I went to the Concho Agency to get information about the well on the Walking Woman Allotment. The Tenneco Oil Company had originally leased the property then sold the lease to Koch Oil Company. We had heard that the well had been capped for two years, but that someone was stealing our oil because people saw trucks coming and going from the allotment. Concho was unable to tell us anything or help us. My brother finally talked to someone from Koch and was able to track down information as to where the money was. He was told that the gas was being sold below the market value. I only received a check in the amount of $1000 that I think came from this lease. I do not know if I have ever been paid what is due to me. We hired an attorney, Amos Black from Anadarko, Oklahoma, to help us recover something from the royalties that were stolen. I have not heard anything about the case lately.

The wells subject to a communitization agreement which affect the Mist and Young Buffalo Allotments were almost de-spaced at one time. Three wells were drilled on my neighbor's land, the Hurts. Ms. Hurt told one of my relatives that they did not want to share with us and were going to cut us out. My family and I stopped by the Concho Agency to find out what was going on. Concho did not have any answers for us. We then went to the Southland Oil Company and spoke to a Mr. Bob Jones who gave us a number for their Dallas office. He also gave us production numbers and told us how to figure out our shares. I figured out my share and it was far below what I had been receiving. We also found out that taxes had been taken out. Someone at the Dallas office told us that we would be reimbursed for the amount of taxes that had been taken out. Concho denied knowing anything about this. To this day, I have no way of telling whether I have ever been reimbursed. We heard that there was some action going on at the Oklahoma Corporation Commission to de-space us. We asked the Concho Agency if someone from the Bureau of Indian Affairs would represent us. They said no. We represented ourselves, and luckily the Oklahoma Corporation Commission ruled in our favor.

Each and everytime we have asked for information from the Concho Agency, they do not know anything. My brother has tried to get information from the Minerals Management Service. He was told that they were not allowed to give any information and to contact the Concho Agency. This is very frustrating. It is my feeling that the people at the Concho Agency are not experienced or knowledgable enough to give answers to our questions, and that Minerals Management Service is unwilling to do so. At the times I have asked questions at the Concho Agency, I also asked for production reports on my wells, but I never received them. The people at the agency were also very rude to me when I would call. At one point, they forgot to put me on hold, and the secretary said, "It's that damn Mary Limpy again."

Thank you for the opportunity to tell you my story. I have never asked for anything but what is rightfully mine. I am one of the few fortunate people who still own minerals from the allotments given to our grandparents, but I am not receiving what is rightfully due to me, and the people who are supposed to be in a position to protect my interests and look out for me have failed to do so. I hope that you can help me and all other Indians who are affected by this kind of mismanagement of our royalties to get this situation straightened up.

STATEMENT OF JEFF SOUTHWICK

CONSULTANT TO OKLAHOMA INDIAN LEGAL SERVICES (OILS) AND THE NATIVE AMERICAN RIGHTS FUND (NARF)

Special Committee on Investigations Hearing
United States Senate
May 12, 1989

SECTION ONE

ALLOTTEES CANNOT UNDERSTAND EXPLANATION OF PAYMENT STATEMENTS

30 U.S.C. §1715. Explanation of payments.

(a) When any payment (including amounts due from receipt of any royalty, bonus, interest charge, fine or rental) is made by the United States to a State with respect any oil or gas lease on federal lands or is deposited in the appropriate Indian account on behalf of an Indian tribe or Indian allottee with respect to any oil and gas lease on Indian lands,there shall be provided, together with such payment, a description of the type of payment being made, the period covered by such payment, the source of such payment, production amounts, the royalty rate, unit value and such other information as may be agreed upon by the Secretary and the recipient State, Indian tribe of Indian allottee.

(b) This section shall take effect with respect to payments made after October 1, 1983, unless the Secretary, by rule, prescribes an earlier effective date.

P.L. 96-451 Legislative History.

Sec. 104: Explanation of payments.

(a) Requires the Federal Government to provides a description and accounting of payments made to State and Indian tribes to accompany such payments.

(b) Requires descriptions of payments to be provided beginning October 198..

Both the language of the Legislative History of FOGRMA and the Act itself clearly require MMS to include a detail statement with payments explaining the composition of the funds being distributed.

The spread sheet included as Exhibit "1" indicates that explanation of payments (EOPS) are delivered approximately 30 days after the allottee receives their check. Due to the time lapse between the check and EOP many allottees throw their EOPs away.

Directly related to this is the allottees' inability to reconcile his EOP with the check received. This is caused by the check amount and EOP amount being different. (See Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 14, 20, 21, 25, 28, 30, 37, 38, 41, 42, 44, 45 and 46 for examples.)

EOPS do not generate a high confidence level in the information they contain. As detailed above, EOPS do not accompany the check distributed and in some instances the amount of the check and the amount of the EOP do not reconcile. This does not foster Indian reliance on the information EOPS contain. At the very minimum the information on the EOP should be accurate. This is not always the case. On Exhibit 5 a mathematical calculation of the allottees' royalty interest was facially incorrect. The allottee (as a group) for that particular month were potentially underpaid by $11,918.19. The same error occurred the following 2 months resulting in potential underpayments of $4,566.71 and $2,547.13 respectively. (Exhibits 6, 7.) Also see Exhibits 10, 12 as further examples of this type of error. The curious aspect of this inaccuracy was the correct calculation of royalties on another well reported on the same EOPS as the incorrect items.

Upon further inquiry MMS made the assurance that the royalty calculation for sales during 9/85 (Exhibit 6) were correct. Their explanation was that a Blanchard payment was made, one payor submitting the base royalty of 12.5% on volume of 9,477 the other payor submitting the excess royalty of 7.5% on volume of 9,477 mcf. Assuming for the moment that MMS's numbers are correct 3 problems arise. First, the statement as sent to the allottees is obviously depicting the wrong information, i.e., you cannot take the volume from the statement, multiply it across EOP, and come out with the same answers MMS did. When MMS was confronted with this problem, they could not come out with the proper answer either, and had to retreat to back-up information to provide the solution to the problem. Secondly, MMS and their sophisticated computer system cannot keep production volume constant. In this particular instance the production attributable to the allottee tract was 9,477 mcf. Yet when the two reports were submitted showing the identical volume of gas, MMS, their computer, or both added the two production volumes together, thus overstating actual production by 100%. Thirdly, a gross proceeds discrepancy arose. As shown above the volume figures reported by both payors were identical. This is indicated that they are selling to the same party, or one party is the gas purchaser and the other party the gas seller. Regardless of their contractual posture, the volume sold multiplied times the unit price (gross proceeds) should be the same. MMS had two different gross proceeds for the same volume.

Their explanation was, "under Blanchard different gross proceed amounts are reported." This is unadulterated hogwash, when two payors are reporting the same volume on the same sale! MMS would be correct had they chose to go one step further, and stated that gross proceeds from two different sales resulting in two different gross proceeds would not match up.

As an example, Gas Buyer A buys gas from Seller 1. Gas Buyer A reports the "landowners" 12.5%, and Seller 1 reports the excess royalty of 7.5% (a typical Blanchard type distribution).

	Gas Volume Sold	Unit Price	Gross Proceeds	Royalty Amount	Allottee Royalty
Gas Buyer A	10,000	$1.00	$10,000	$1,250.	(12.5%)
Seller 1	10,000	$1.00	$10,000	$ 750.	(7.5%)
	10,000	$1.00	$10,000	$2,000.	(20.0%)

Notice the only difference is the royalty amount the parties pa

To further support the low believability rate of MMS generated EOPS, royalty rate calculations provided to MMS by industry payors must be examined. Indian oil and gas leases bear either a 1/8 (12.5%) 1/6 (16.66%) or 1/5 (20.%) royalty burden. Exhibits 12 thru 18 are examples of erroneous royalty calculations. These exhibits purport to pay the Indian lessor 1/40 (2.5%). These errors were not picked up by MMS. The information given in the EOP suggested that allottees who share in this well were apparently underpaid by $2,190.79.

From the appearance of certain other errors, MMS doesn't have the current computer capability to catch incorrect royalty rates. Exhibits 17, 18 illustrate this recurring problem.

Exhibit 17 shows that the allottee tract was apparently underpaid by $4,112.96. Exhibit 18 shows the allottee tract was apparently underpaid by $1,680.69. (Royalty rate should be 20%.)

Another computer generated error is shown on Exhibit 21. This exhibit illustrates the computer's ability to add, however, the computer is unable to recognize, (and subtract) credits. The end result is confusion to the allottee, as shown by their notations on Exhibit 21. Oklahoma is a peculiar state when it comes to distributing oil and gas royalties. Until recently, the Blanchard decision resolved the manner in which royalties were distributed. Under Blanchard, the first purchaser of oil and gas pays the "landowners" royalty (1/8 or 12.5%). Any royalties in excess of 12.5% are to be paid by the various working interest owners who share in the lease. The accounting problems with such a system are readily apparent. First, MMS must receipt royalties from a potentially large groups of payors. To properly reconcile royalties MMS should compare the receipt of all sales for a month reported by various payors, to the total production from the respective well or wells. This doesn't seem to be occurring. Exhibits 24 through 45 illustrate the problems Blanchard has created for MMS. These exhibits show multiple payors on single wells. The combined royalty rates of these multiple payors seem to exceed the royalty rate established by the lease. However, one payor may not be following Blanchard and is remitting the full lease royalty as it pertains to their working interest. The other royalty payor may be abiding by Blanchard and only

remitting the excess royalty amount, fully expecting the first purchaser to pay the difference. If this is true, then three payors should be remitting (1) the 20% party, (2) the excess royalty party (7.5%), (3) and the excess royalty party's first purchaser (12.5%). From the information available off the EOP, it is not apparent who should be paying and in what amount.

The EOP does not give a true representation of what is occurring on the drilling and spacing production unit. as currently reported, EOP's show only the oil and gas quantity attributable to the allotted Indian tract, not what the drilling and spacing unit has done as a whole. As a result, the allottees and their representatives cannot compare the production as reported on their EOPS to industry reports, Oklahoma Corporation Commission records, Oklahoma Tax Commission records or even purchaser's records who buy the allottees' oil and gas. This problem is compounded by split stream gas sales where multiple purchasers buy gas from one wellbore. Generally see Exhibits 24 through 45.

The allottees who provided these exhibit EOPS were concerned about monies being withheld from their checks. These withheld funds are shown as allowances on Exhibits 40 thru 46. The first allowance deduction occurred in October of 1988. The total allowance deducted for October was $2,623.59. This represents 34% of the money to be paid to the allottee which was withheld from their check by the operator. This particular EOP was submitted to MMS with instructions to explain the allowances

permitted and MMS steps taken to inquire about or audit allowances. MMS responded that they permitted allowances up to 50%, and upon permission from MMS grants allowances over 50%. MMS also admitted that they do not review allowances, but that allowances are "subject" to review.

What this leads to, is no review of deductions from allottee's checks. Further, there is some dispute as to what should comprise allowances and whether certain allowances should even be permitted. Since allowance deductions are a "hot" topic, and the oil industry is working on tight profit margins, careful review of allowance deductions should be mandatory.

An inquiry was made of Apache Corp., operator of this particular well concerning production volumes and prices. Apache promptly replied with a production report for 1988 attached as Exhibit 47. The volumes reported were compared to industry bulletins (Exhibit 48) for accuracy. Few of the months compared were the same. Additionally, the total production reported by the operator on Exhibit 47 was approximately 350 million cubic feet more than the volume reported on industry bulletins as shown on Exhibit 48. It is our understanding that industry bulletins are taken directly from reports submitted to the Oklahoma Tax Commission, and thus should be fairly accurate.

The Apache report for 1988 did indicate the volumes taken by the various gas purchasers, and by computation, the per unit price paid. The unit price breakdown is on Exhibit 49. Exhibit 49 illustrates the 2 most prolific gas purchasers on the Scott B-

1 well were Reliance Gas (shown on Exhibit 49 as number 525), and Apache Gas Marketing (shown on Exhibit 49 as number 36549). Exhibit 49 readily illustrates that the price paid for like-kind gas purchased from the same wellbore can vary significantly. MMS in prior audits has demanded that the lessee reporting the lower price gas compute allottee royalty on the highest price paid from the wellbore. Applying this rationale to Exhibit 49 we would find MMS submitting demand letters from price recomputation to the 2 gas purchasers 11 out of the 12 months reported. Perhaps what is most frightening is that 2 of the purchasers are deducting allowances from the gross proceeds of the well in which allottee royalties are computed. Never has an oil and gas lease been so interpreted to allow a lessee to burden the royalty interest with costs associated with drilling, completion, production, or operation of a well. MMS tolerance of allowance deductions from allottee royalty is against previous case law and generally accepted industry practice. Transportation allowances were previously permitted for oil production in so remote an area, that to make the oil marketable, "reasonable and actual" costs associated with transportation of oil were allowed to be deducted.

MMS now holds that transportation of gas falls in the same category. However, in this particular instance permission of such an allowance falls well short of the mark. First, the deducting gas purchaser is calculating his deduction on volume produced. The amount deducted is 20 cents per thousand cubic

feet of gas (mcf) produced. No evidence has been supplied that this charge per mcf constitutes actual and reasonable costs. Further a volumetric charge of this nature flies in the face of "actual" costs. The actual costs associated with transportation should be a variable cost and not a fixed cost. Secondly, MMS is far afield in allowing any form of deduction for allowances on this well. Costs such as dehydration and compression have traditionally been operating costs and as stated above, not associated as charges to the royalty owner. Any argument put forth by MMS or others that allowances should be allowed on this particular well are specious. MMS by their own admission, allows only those actual charges that create a market for oil and gas away from the wellhead. By simply examining Exhibit 47 it can be noted that there are gas purchasers taking gas at this particular wellhead who are not taking allowances. By not allowing withholding in 1988, allottees would have been paid an additional $17,397.10 (see Exhibit 49 for calculation). This works out to additional royalties for allottees during 1988 of $1,449.75 per month.

Additional monies were found in 1988 in the form of gross production and severance taxes potentially being improperly withheld. "Potentially" is used because it is not known if a further adjustment is being made to credit taxes for allottee royalties. From the face of the operator's internal document (Exhibit 47) taxes are being withheld in gross. If the gas purchaser's are improperly withholding taxes as this document

shows then allottee royalty owners were underpaid $11,695.75 for 1988. If this was a continuous practice for the life of the well, then potential underpayment to the allottee royalty owners is approximately $44,000.

An additional reference should be made back to the EOP generated by MMS. When a composition of per unit price derived from the operator's internally generated report for 1988 (Exhibit 49) are compared to an Analysis of Unit Price and split stream sales computed from MMS generated EOPs for the 1988 time period, the unit price numbers do not correlate. Exhibit 50. Take for example the lowest price shown on an EOP for a well during 1988 (Exhibit 50). This occurred in June 1988, the EOP unit price for the well was 89 cents per thousand. Comparing this to information derived from the operator internal report (Exhibit 49) the lowest unit price for June 1988 was $1.04. Although the unit price is close in some instances, it is not exact. What could be happening is that some purchasers and excess royalty payors are remitting funds to Apache, who in turn is averaging the price and gross production amount, and then deducting taxes and allowances. Although this is probably the most practical way for a operator to report when split stream wells are involved, the information that is given on the EOP is not representative of what occurs on the lease. Further compounding this problem, after MMS breaks down the gross production to represent production attributable to the allottee tract, all ability for

the allottee to cross-check or verify his well information to independent sources is lost.

An additional question arising out of the review of EOPs is another example that relates to the Scott B-1 well. On Exhibit 43, a $19,742 assessment is shown being paid by Cities Service Oil Company on the Scott B-1 well. Examining the Industry report for 1988 (Exhibit 48) Cities Service is not shown as a gas purchaser. Further, examination of Exhibit 47 where an Apache employee wrote the names of working interest owners names who were selling to Reliance, Cities Service is not noted. Cities Service was contacted and they claim they own no interest in the well and are not purchasing gas from it. The question is, why then are they paying an assessment on a well they have no interest in?

Finally, a review was made of late payments to MMS by Apache, payor on the Scott B-1 well from August, 1986 through December of 1988. Apache was consistently one month late in remitting payments. Exhibit 51 was prepared to illustrate the late payments and the amounts that were tardily paid. A somewhat arbitrary interest rate of 12% was applied to show how much the allottees were potentially underpaid. Just prior to this writing an EOP was submitted on the Scott B-1 well, showing that an assessment had been collected from 1-87 thru 1-88, Exhibit 46. However, this amount is approximately 1/3 of the amount Exhibit 51 indicated. Either MMS did not collect all late payment interest, or MMS is using an interest rate of approximately 1/3

the 12% interest rate used (4.0%). Alternatively interest assessments are being "rolled up" in such a way that the allottee cannot monitor them. Since the interest on late payments is to be derived from Internal Revenue Code of 1954, Section 6627, a 4% interest rate does not seem realistic.

Additionally, MMS is subject to paying to the allottee interest calculated in the same manner for its tardy payment. The statutes provides:

> §1714. Prompt disbursement of royalties.
>
> Deposits of any royalty funds derived from the production of oil or gas from, or allocated to, Indian lands shall be made by the Secretary to the appropriate Indian account at the earliest practicable date after such funds are received by the Secretary but in no case later than the last business day of the month in which such funds are received.
>
> (d) Any deposit of royalty funds made by the Secretary to an Indian account which is not made by the date required under subsection 104(b) [30 U.S.C.S. §1714(b)] shall include an interest charge computed at the rate applicable under section 6621 of the Internal Revenue Code of 1954 [26 U.S.C.S. §6621].

The literal language of the law states that funds must be deposited in the appropriate Indian account by the end of the month received. In the EOPS reviewed for the Scott B-1 well, deposits to the IIM Account were tardy under the statutory language 37 out of 44 times. If however, 30 days from date of receipt were allowed as a proper time period, MMS was tardy only 3 times out of 44. MMS has <u>never</u> paid an interest assessment on the Scott B-1 well.

An Exhibit was prepared comparing unit prices shown on the EOP for different wells (Exhibit 50). There are 3 different wells that are reported on the exhibit EOPs and analysis therein. All 3 wells are in close proximity to each other. (Approximately 1 3/8 miles between the furthermost.) (See Exhibit 52). These wells are denoted wells "A", "B" and "C". Well 'C' was not included in the unit price analysis for two reasons. First, the production from well 'C' is from a different formation than the other two. Second, well 'C' production is classified as 07 - "gas plants products." Conversely, wells 'A' and 'B' are from the same horizon (Morrow-Springer) and shown on the EOP as 04 - unprocessed wet gas. Additionally, the gas purchasers on well 'B' buys some of the gas on well 'A'. Further, the gas purchasers who withhold allowances on well 'A' are buying gas on well 'B' where no allowances are being reported as withheld. It was noticed that when the gas purchasers began to withhold allowances on well 'A', the price of gas fell on well 'B'. Very possibly the purchaser is taking allowances which the operator of well 'B' is not reporting to MMS, in such a way that it could be shown on the EOP i.e., it is a hidden charge. Additionally, the gas purchaser on well 'B' was shown as withholding gross production taxes and severance taxes from allottee production on well 'A'. Accordingly, potential royalty underpayments could have occurred on well 'B' as previously discussed.

Since common gas purchasers are present on well 'A' and well 'B' it could be assumed the gas price on both wells closely

parallel each other. This is not the case. As shown by Exhibit 49 the prices vary from well 'A' to well 'B' on a month to month basis. To compound this problem, even the split stream sales out of the same well bores of wells 'A' and 'B' vary significantly. Another bothersome factor is that the operator of well 'A', Apache Corp. is selling gas to an affiliate, Apache Gas Marketing.

Another bothersome aspect of gas unit prices was the vast fluctuations in price as shown by the EOP. On Exhibit 1 where EOP prices are posted, notice the sudden drop in well 'A' unit price from 7/85 to 8/85 from $2.50 per mcf to $1.23 per mcf. What is even more questionable is the return of the unit price to $2.44 the following month (9/85). This anomaly again occurs in May of 86 where the April price of $1.98 fell to $1.15. However, the gas price did not return to prior level. It fell even further the next month to 69 cents. The unit price did increase in August, almost doubling to $1.29. Again in February, 1987 the unit price plummeted from a January value of $1.25 to 34 cents, almost a 75% decline in value. Once again, in March the price tripled to $1.15. Finally, the price dropped again in June, 1988 from a May value of $1.18 to 89 cents. Only to repeat it's previous erratic behavior by going back up in July to $1.25.

This erratic activity in gas unit prices on well 'A' is not reflected in well 'B' where a common buyer acquires the gas. This questionable activity could be explained by MMS "rollup"

adjustments. If this is the case, MMS should be called on the carpet for not disclosing these adjustments on the EOP.

As a contrast to EOPs, industry check stubs are attached as Exhibits 53, 54, 55, and 56. Additionally, a industry brochure for enhanced royalty relations, and payor/payee interrelationship is included, Exhibit 57. What has MMS done to enhance royalty relationships and improved response to allottees?

SECTION TWO

THE DEPARTMENT OF INTERIOR DOES NOT MAKE CONSISTENT DECISIONS

The Department of Interior is sometimes forced with the decision of what's best for the allottees. Unfortunately this bit of "playing God" does not always result in "God-like" decisions. Some decisions have absolutely been against the best financial interests of the allottees.

Perhaps the best example available to emphasize this point is the case of Teresa Bear.

Teresa, her sister, and two brothers own a quarter section allotment in Dewey County, Oklahoma. Exhibit 1. In 1973, Ladd Petroleum owner of the other leases within the Section spaced the Section at the Oklahoma Corporation Commission for 640 acres gas spacing in the Morrow formation. Mustang Production Company owned the oil and gas lease on Teresa's property at the time. In 1976 Ladd drilled and completed the Chain Ranch well 330 feet from allottee property. Exhibit 1. This was legal for 640 acre gas spacing, but illegal for 160 or 320 acre spacing. The Chain Ranch well produced oil with some gas. Upon inquiry of the operator, they said they attempted to communitize the allottee property with the rest of unit in conformity with the established state drilling and spacing unit. Ladd claimed the Department of Interior denied their communitization request. Since an oil and gas lease was in effect on Teresa's land at that time, Interior could have demanded that Teresa's lessee develop the land, or require compensatory royalties from the allottee lease owner. Supposedly, Interior demanded development of the

allottee tract, or detailed engineering, geologic, and economic data to justify the lessee's position. The lessee replied by merely inclosing a production decline curve showing "ultimate" recovery of the offset well to be 25,000 barrel of oil. The well achieved that four months after the lessee's reply letter was written.

Whatever action Interior took, the allottees received no royalties. This did not prevent their lessee from participating in the offset well. Even though the allottees were unable to receive any royalties because of Interior's denial, their lessee collected income from the well and paid the allottees nothing. To date the well has made in excess of 80,000 barrels of oil, contrary to the claims of the lessee that the well would only make 25,000 barrels of oil. Obviously, the lessee did not want to protect the Indian tract. Had the allottees been able to participate in the production, they would have received 4.1667% of the proceeds or about $75,000 to $100,000. In 1980 BIA granted a new lease on the allottee's tract. The Ladd offset well was still producing and the original Indian lessee, Mustang Production was still receiving income when this new lease was granted. To this date Mustang is still receiving income.

What was probably the most bizarre occurrence was a demand letter written by Interior to the current lessee of the allottee's tract. Interior demanded the drilling of a well on the allottee tract, or payment of compensatory royalties.

Further, the letter from Interior alleged the Indian tract was being drained by the Chain Ranch well. (This letter was written in 1984, eight years after the Chain Ranch well was drilled.) Exhibit 2.

Contrary to Interior's position on Teresa Bear's property, Interior on two occasions granted permission to communitize Indian allottee tracts into 640 acre units for oil. The first instance occurred on a piece of property called the Heath well owned by Thelma Haag. A well was drilled for Morrow gas. The first well completed on the tract was gas and promptly shut in. Interior was approached for a communitization agreement for gas and gas condensate. The communtization agreement was agreed to by Interior. After a few months production the character of the reservoir changed and it became an oil well. The oil operator approached Interior to amend the communitization agreement to include oil. Interior agreed. Their correspondence is attached as Exhibit 3.

Finally, the other instance where communitization of allottee tracts occurred was in the Leo Hurt wells as shown by the Mary Limpy audit. (Discussed in the audit materials.) In that instance two allottee tracts were joined with non-Indian interests to form a single 640 acre tract. This property is productive of oil as denoted by the audit reports, Exhibit 4.

Also see Mary Limpy's written statment regarding Interior's posture as the fee owner tried to despace the Indian owners out of the Hurt wells. Exibit 5.

CERTAIN INDIAN ROYALTY OWNERS ARE SUBSTANTIALLY UNDERPAID

On one well owned by Cheyenne and Arapaho allottee mineral interest owners, an underpayment of $1,742,580 to these particular allottees has occurred. This lease has 2 producing gas wells Sankey 1 and 2 on it and 3/4 of the royalty (9.375%) is allottee owned. In reviewing the production history of this well certain disturbing items were evidenced. Overall, from 1973 through June, 1988, the Indian allottees were underpaid by an average of 750% of what they were actually paid. At the highest point the allottees were underpaid 1,330%. For the time period in which the allottees were underpaid, (thru 1973 and continuing) the aggregate Indian allottee royalty owners under these 2 wells were underpaid an average of $9,600 per month. As to the 3 allottees, they were individually underpaid an average of $3,200 per month. For the last 5 years the aggregate Indians allottee royalty owners were underpaid an average of $15,000 per month, or $5,000 per individual allotment per month.

One of the Indian allottees who shares in the royalty production from these wells is Thelma Haag. Below is Mrs. Haag's story.

Plaintiff Haag is the primary support for her family as her husband is unable to work. She has received sporadic royalties for the past two years. She asked the Concho Indian Agency to investigate, and it orally reported that her royalties were going to her cousins and the Agency would recover the monies. She has not received any monies or any correspondence confirming the report.

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What those brief allegations don't tell you is that Thelma Haag is still suffering from the same allegations raised in that complaint five years ago. MMS audited the Sankey #1 and #2 twice, and examined product valuation. MMS found Thelma Haag's leases generally in compliance. During this time Haag has been using Coleman lanterns for light, and cooking over an open flame outdoors because she has no gas. Upon a recent visit to her home, it was noted that once again she had no electricity, and she was making desperate attempts to prevent food spoilage from occurring. Mrs. Haag was seeking transportation to a local shop to sell some Indian dolls to raise quick cash. Certainly, Mrs. Haag's financial hardships could have been alleviated by aggressive government activity on her behalf.

Following are spread sheets (Exhibit 1) detailing annual gas volume sold, contract price received, national average wellhead gas price, and the amounts by which Indian allottees under the Sankey wells were underpaid. This information supports the

contentions raised above, and suggest the Secretary reconsider his position in pursuing retroactive price adjustments for the benefit of allottees subject to low price, long term gas contracts. Attached as Exhibit 2 is a current copy of an EOP that Thelma Haag received. Note that the gas prices detailed on it roughly correspond, except for lease #00857. Were Thelma Haag to receive on lease 00857 the lowest gas price paid on any other well reported on her EOP, she would receive seven times more money.

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Exhibit 25 details production information on the Viersen well. The detail information is the same as the Red Cloud well above. Exhibit 25 indicates that the allottees were underpaid on the Viersen well by $240,401.

Exhibit 26 details production information on the Haigler 1-D well. According to BIA information, the Haigler 1-D well is a 160 acre allotment out of a 640 acre gas spacing unit. The allottee's royalty is 16.667%. Exhibit 26 indicates that the allottees were underpaid on the Haigler 1-D well by $193,164.

Exhibit 27 details production from the Striking Unit well. The Striking Unit is a 160 acre allotment out of a 640 acre gas spacing unit. The allottee's royalty is 12.5%. Exhibit 27 indicates that the allottees were underpaid on the Striking Unit well by $469,290.

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By adding these underpayments to the Sankey wells we find that a total of $3,584,215 has been underpaid. All these underpayments occurred on Cheyenne and Arapaho allotments. Looking to the time period when the above leases were first produced, there is a potential of underpayment on 225 Cheyenne and Arapaho producing leases. This does not take into account previously producing leases that have been depleted and plugged, nor does it take into account producing gas leases on the sixteen other Tribal allotments in Western Oklahoma. In light of these

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Although it might be argued that the unusually low gas price paid on these wells were tied to a contract, this argument doesn't stand close scrutiny.

First by Oklahoma law, an oil and gas operator has a duty to obtain the highest price paid for oil and gas production he sells on behalf of the others. See Exhibit 32. Secondly, the express language of the oil and gas lease provide that the lessee shall pay the "highest price paid or offered at the time of production for the major portion of the oil of the same gravity and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated." See Exhibit 33. This value is subject to the "discretion" of the supervisor, who, to successfully discharge his trustee responsibility should demand the highest price paid in the field. Thirdly, the lessor has a right to take production in kind upon 30 days notice to either the lessee, the gas purchaser, the government, or all three. See Exhibit 33. When confronted with the governments' duty to assist the lessor in taking production in kind, a government solicitor replied, that "The right to take production in kind was reserved only in the lessor." Facially, this statement is true. However, the attorney for the Solicitor's office forgot the pervasive government presence and high profile intervention in the Indian Allottee lease process. First the government advertises the

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With government intervention being so all-encompassing, it is difficult to see why the attorney for the Solicitor's office was so eager to lay this particular responsibility at the Indian lessor's feet. This is particularly true when few or none of the Anadarko allottees have availed themselves of this benefit.

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SECTION FOUR

AUDITS PERFORMED BY MMS CONFIRM INDIAN ALLEGATIONS

After the institution of legal proceedings by David Kauley, Thelma Haag, and Mary Limpy, MMS decided to perform comprehensive audits of leases each of the name plaintiffs owned an interest in. The results of these audits indicated serious problems occurred and reoccurred on Indian leases. When questioned about either exploring the scope of these audits or further audits of a similar nature taking place, MMS either refused to answer or couldn't detail any additional comprehensive audits being performed. The similarity of problems lessees had in distributing oil and gas proceeds compared to allottee problems, suggested that this type of problem was universal to all allottee leases. From an auditing point of view, problems of this magnitude indicated MMS should have increased the number of allottee leases audited. MMS should have reviewed audited companies to determine whether these companies were in compliance after audit. Finally MMS should have examined their own organization to determine whether allottees were being paid promptly or not.

MMS has greatly improved the timeliness of payments to allottees. However, MMS still is not collecting interest on late payments in a timely fashion. (See report on Decker EOPS for further detail.) Nor has evidence been presented indicating that MMS has paid statutory interest as prescribed by FOGRMA, even though their own audit reports indicate timely payments were not made. Unfortunately, the MMS audit reports did not extend their

review to show how quickly the allottees were paid. Had the auditors taken one further step of examining when the funds were deposited to the Individual Indian Money Accounts, they probably would have discovered many more late payments. By cutting off their review of payments to BIA, the auditors do not tell but half the story. The deposit to BIA is merely a deposit into an aggregate account which required further processing by MMS to determine which allottees are to receive these funds. BY MMS own admissions, these funds languish for upwards of 4-6 weeks before they can be distributed to the IIM account. It is our opinion that this slow payment into the IIM is to bear interest at the statutory rate as prescribed by Sec. 1721(d) of FOGRMA.

Returning back to the audits performed by MMS, we feel that MMS should be commended for the detailed analysis used to perform the audit. However, the audit findings were precisely what the allottees complained about in their lawsuit. MMS should have been alerted and expanded the scope of their audits on allottee lands to investigate these common and reoccurring themes.

By reviewing each of the audits and remarking on the findings and conclusions it should become apparent how items that translate into dollars taken from allottees continue to repeat.

Exhibit 1

Audit of Lease 14-20-0205-007056

Noblitt 1-33 Well

Operated by Vierson & Cochran

MMS audit #18-5-4-04-0-75200-001

Date of report 6/85

Period of report Date of 1st production (5-83) thru 12-84

The audit was initially restricted to receipt of funds by MMS, however the audit scope was later expanded to include payment by MMS to BIA. MMS was late in making royalty payments to BIA. No review was performed to determine when BIA finally paid the allottee, nor the time period from MMS's receipt of money to the deposit in the IIM account as prescribed by FOGRMA.

Audit results indicated that on this lease $17,592.25 of excess royalties were not paid, and $262.59 of oil royalties were unpaid. The large amount of unpaid royalties relate back to the Blanchard decision in Oklahoma. The Blanchard decision provides for a complex distribution scheme of royalties and excess royalties. MMS has issued three different directives on Blanchard, two of which denied the applicability of Blanchard to federal and Indian royalties. The third directive occurred in between the other two, directing payors to disregard the first directive. Thus the first directive to industry - Blanchard doesn't apply to federal or Indian royalties, the second directive urged industry to ignore the first directive - Blanchard does apply. Finally, MMS again notified industry that Blanchard does not apply. These mixed signals to industry fully explain the response to our query of MMS as to how many payors are still following Blanchard? Their response - fifty percent! Given the fact that excess royalties exceed by somewhere between 33% and 60% of the base landowner's royalty (12.5%) unpaid excess

royalties such as these should be a fertile field to plow for underpaid and unpaid royalties, as the result of these audits fully detail.

Exhibit 2

Lease 14-20-205-00857

Sankey #1 and Sankey #2 Wells

Opened by Sun Exploration Corp.

MMS Audit #18-5-4-07-0-39900-002

Date of report: 6/85

Period of report 7-83 thru 12-84

The audit scope included a computation of royalty value. The audit was initially restricted to a review of payments to MMS and subsequently expanded to review payments by MMS to BIA. However, the expansion did not encompass a review of payments from BIA to Allottees, nor a timeframe from receipt of funds by MMS to payment to allottees.

Audit results indicated that MMS had previously audited these 2 wells for the time period of 9-82 thru 6-83. It is interesting to note that the well began producing in 1967, yet MMS chose not to go back to the date of first production as they did in the previous audit.

We were not provided a copy of this previous audit so our comments are limited to the audit provided. The auditor's noted only 2 items of importance. According to MMS records three checks were not receipted by MMS. Upon subsequent review it was determined that MMS did indeed receive two of the checks in question even through their books and records did not reflect so.

The third check was never received. Additionally, seven checks were paid late from MMS to BIA, anywhere from 34 days to 145 days after receipt.

Exhibit 3

Audit of leases 518-007338
518-008603
518-008604

Walking Woman 1-31-Well

Operated by Tenneco Oil

MMS Audit 16-5-2-18-0-41340-001

Date of Report 11/85

Period of Report date of first production (9/84) thru 2/85

The operator of this well was caught selling gas from this well and another well (on different property) through a single meter in violation of state law, Exhibit 4. As a result no royalties were reported. MMS agreed with the operator to allow the operator to remit $33,343.08 in royalties after the audit of this well was initiated. Additionally, some gas sales and resulting royalty were estimated. The operator withheld gross production tax from Indian production. This was impermissible. The auditors notified the operator and requested $884.64 for improperly withheld tax. The next month, once again, the operator was withholding taxes on Indian royalty. The operator was notified by their gas purchaser that the Walking Woman well was to be credited with 11,366 mmcf gas. The operator

failed to pay Indian royalties of $2,308.21 until paid by the purchaser. This position was contrary to statutory requirements.

Additionally, MMS auditors noted the operator's failure to use the correct pressure when reporting resulting in a royalty underpayment of $301.20. Also, the operator filed incorrect production reporting forms, incorrect BTU contents and incorrect monthly reports of operations.

Lastly, the auditors noted that recoupments that the operator took for royalty overpayments were not picked up by the financial accounting division, nor were the recoupments applied to another allottee lease within the tract.

Exhibit 5

Audit of Leases 14-20-205-7238 & 14-20-205-7333

Allee 1-4 Well

Operated by Cotton Petroleum (Now Apache Corp.)

MMS audit #18-5-4-04-0-17850-001

Date of Report 6/85

Period report covers - 11-82 thru 2-84

The operator and gas purchasers were not paying the NGPA designated price. As a result the operator was assessed $16,639.15 for price corrections and associated interest. These amounts were subsequently collected. Unfortunately, MMS later revoked NTL-5 which previously commanded NGPA prices as collected above. Their revocation letter now allows for recoupment of these overpayments retroactively. An audit official at MMS was asked his opinion of the amount of refunds allottees may be faced with and he replied that there shouldn't be many due to the dual

accounting requirement. Since this gas and other gas sold from allottee wells is priced at the wellhead, it would seem dual accounting is inapplicable and wellhead sales are subject to recoupment.

Once again MMS auditors found royalty underpayments of Blanchard excess royalties and collected $5,144.59 in underpaid excess royalties and associated interest.

MMS expanded the scope of their audit to include distribution from MMS to the BIA aggregate accounts. Eight payments from 8/83 through 8/85 were paid to BIA more than 30 days late. The BIA received payment from 33 days to 133 days after receipt by MMS.

Exhibit 6

Audit of Lease 14-20-205-6484

Decker #23-1

Operated by Woods Petroleum Corp.

MMS Audit #18-5-4-04-77930-001

Date of Report 6/85

Period Report Covers 12/81 thru 3/84

This particular audit had virtually no findings in favor of allottees. The operator had overpaid royalties in the amount of $1,828.70. MMS wrote the operator a letter authorizing recoupment of overpaid royalties.

The scope of the audit was expanded to review timeliness of payments from BIA from 12/18 thru 12/84. Two payments were late. One payment was paid in 38 days and the other in 42 days.

Since this was a short audit this should be an appropriate time to discuss MMS audit philosophy.

This particular well had a date of first production of November, 1980. yet the audit period began 12/81. By not reviewing back to date of first production, a valuable audit "window" is lost. Why? Usually in first reporting of production is where initial errors are made. Secondly, MMS could give the operator a clean bill of health for all production reporting and accounting. Sadly, this audit "window" is now lost due to the six year FOGRMA statute of limitations. It may not be so important in this instance, but for those productive wells completed in the mid 60's, valuable audit material was lost. On previous audits reviewed, if the production was earlier than FOGRMA, MMS would not review such earlier production.

Perhaps MMS's justification was the allottee accounts had been reconciled, but a reconciliation is not an audit. Now the information that was available for audit is irretrievably lost, and each year that passes without audit, the availability of that material also is lost.

Exhibit 7

Audit of Leases 518-000506 & 518-000508

C.R. Hagler #2 Well

Operated by Sun Exploration & Production Co.

Date of Report 7/85

Period Report covers 12/81 thru 12/84

This particular audit is a good indicator of the critical need for MMS to go back in and audit to date of first

production. The well audited was drilled in January of 1975, yet the property was communitized (per the audit report) in 1967. Why? Because an earlier well had been drilled, produced, depleted and abandoned. Did the MMS audit disclose or discover this? No! Why bother? Because the initial well had no review of the allottees' interest from the date of first production to it's subsequent abandonment. Further, MMS could review company records and Oklahoma Corporation Commission records to see if the first well was plugged and abandoned prior to the spudding of the second well. Why is this important? If the first well was plugged before the second well was spudded, or the first well ceased to produce in "paying quantities", then in either of these events the oil company did not have a lease on the Indian allottee land. No lease in effect would translate to the Indian allottees' having a 15.6% interest in the well instead of 1.95% interest.

Further, the allottees may not have been paid on the first well, paid improperly, had taxes withheld on their royalties, or a myriad of other occurrences which diminish allottee royalties.

Finally, the lessee who abandoned the well had 90 days to remove his equipment from allottee land or it becomes the property of the allottee. Not only in this instance is the 90 days important, but as wells deplete and operators abandon, Interior Department should closely monitor these abandonments and seize property for the allottee's benefit when more than 90 days pass.

Exhibit 8

Audit of leases 518-000592 & 518-000593

C.E. Heath Wells, 1, 2, 3, 4

Operated by Sun Exploration & Production Company

Date of Report 7/85

Period Report covers 12/81 thru 12/84

MMS audit of this lease disclosed that unpaid royalties were discovered which totaled $4,517.94. Additional charges for interest associated with unpaid royalties totaled $1,383.56.

MMS expanded the scope of their audit to include a review of late payments from MMS to BIA. Whenever I see a company audit itself or a governmental entity doing self-review, the story about asking the fox to watch the chicken coop comes to mind. Back to the audit. The expanded scope indicated 24 payments from 12/81 to 12/84 were paid by MMS from 31 days to 218 days after receipt.

Again, this is only a partial review of the allottees' complaints. Had MMS checked the number of the days from receipt by MMS to delivery to the allottees, the time delay would have been greater.

Additionally, four checks for a total of $450.14 were remitted by Sun but never found. Stop payments were issued on these lost checks and new checks issued.

Exhibit 9

Audit of Lease 518-000145

Cowan #1 & Cowan #2 Wells

Operated by Sun Exploration & Production Company

Date of Report 6/85

Period Report covers 12/81 thru 12/84

No exceptions were written on these wells. However, this property was communitized in 1965. These wells could be subject to the same "old" gas contract that was highlighted in the Sankey report previously discussed.

MMS expanded the scope of this audit to include a review of payments from MMS to the BIA aggregate account. In the time period of 12/81 thru 12/84, 20 late payments were made. Time of receipt by MMS to payment to BIA was anywhere from 32 days to 461 days.

Also a payment from the operator had the incorrect lease number on the 2014 so $2,742.26 was paid to the wrong lease. This lease was corrected in review and payment made to the proper lease.

Exhibit 10

Audit of Leases 14-20-205-7628 & 14-20-205-7629

Leo Hurt 1-6, Leo Hurt 2-6 & Hurt 1-6

Operated by Southland Petroleum & French Petroleum

Audit #18-5-4-07-0-50210-001

Date of Report 7/85

Period Report covers 10/81 thru 2/84

MMS had a field day of audit exceptions on these leases. $45,426.78 in unpaid and underpaid royalties were found. MMS assessed $4,860 in liquidated damages against the oil companies involved. MMS also collected $16,997.49 in late payment charges (interest).

MMS expanded the scope of their audit to include review of receipt of royalties by MMS and then timely payment to BIA. Nine payments were tardily made from 10/81 thru 12/84. After receipt by MMS those payments were made anywhere from 34 to 79 days to BIA.

Exhibit 11

Audit of leases 518-008161 & 518-008278

Smallwood 1-15 well

Operated by Inexco Oil Company

Audit #16-5-2-02-0-30250-001

Date of Report 11/85

Period report covered 3/82 thru 11/84

This was the latest audit issued by MMS. Basically the problems associated with these 2 leases arose because of Blanchard. Lease 8161 was overpaid on royalties by $5,064.18. Lease 8278 was underpaid or royalties $13,785.88. An overpayment did occur on lease 8278 of 4,281.84. Of this overpayment amount, one oil company, Lear Petroleum overrecouped $2,687.43.

MMS expanded the scope of this audit to include a review of payments from MMS to BIA aggregate account and their timeliness from the time period 3/82 thru 12/84. MMS receipted eleven payments and distributed then to BIA within 42 to 78 days.

In summation, $162,357.92 in uncollected royalties, interest and damage assessments were collected on behalf of allottees. About 17 leases were reviewed. What the audits illustrate were confirmation of the allegations of the allottees in their lawsuit. Royalties were not being paid, royalties were

not timely paid and MMS was late in paying allottees on occasion without paying associated interest. The audit findings and collections average out to about $9,500 per lease in additional collections for the benefit of allottees. If this average was to be applied to the total universe of Anadarko producing leases (940 leases) significant collectors could be had. I can't believe that these are aberrations and that only those allottees being disadvantage were complaintants in the lawsuit. This aberration theory is partially dissolved by the fact that only ten wells were audited, but seventeen leases were included in the audit. This supports the fact that other leases besides the complaintants were involved.

Secondly, the review of "old" gas contracts suggests that in excess of $3,500,000 is collectable on ten of the allottee leases reviewed. As our discussion outlined on the Sankey wells indicates, other wells might exist out there that are underpaid and unnoticed.

HEARING EXHIBITS

SPECIAL COMMITTEE ON INVESTIGATIONS
HEARINGS ON GOVERNMENT MANAGEMENT OF ALLOTTEE OIL AND GAS ROYALTIES AND RESOURCES

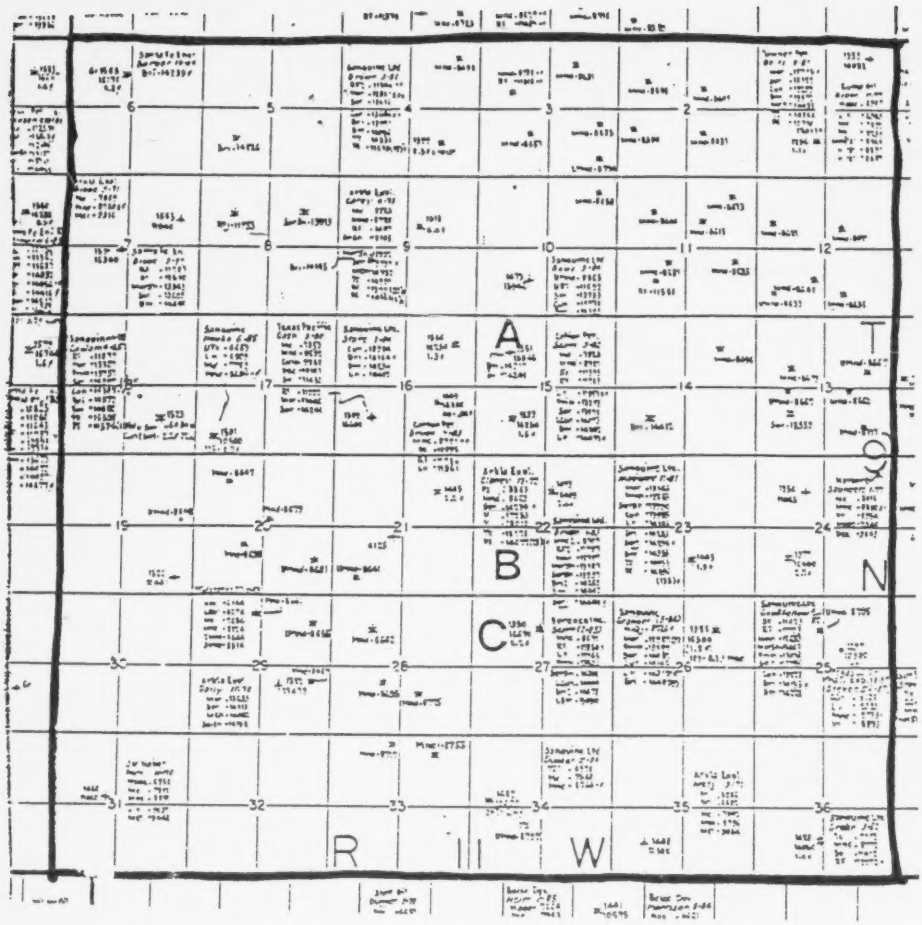
Friday, May 12, 1989

Plat Maps of Indian Allottee Land - Oklahoma (two)

Statement of Oil & Gas Receipts and Disbursements (Anadarko Agency - BIA) for Houston Decker (10/1/88)

Royalty Payment Statements (two)

Chart Comparing Contract Value of Gas on Lease with the Market Value of Gas (1973 - 1988)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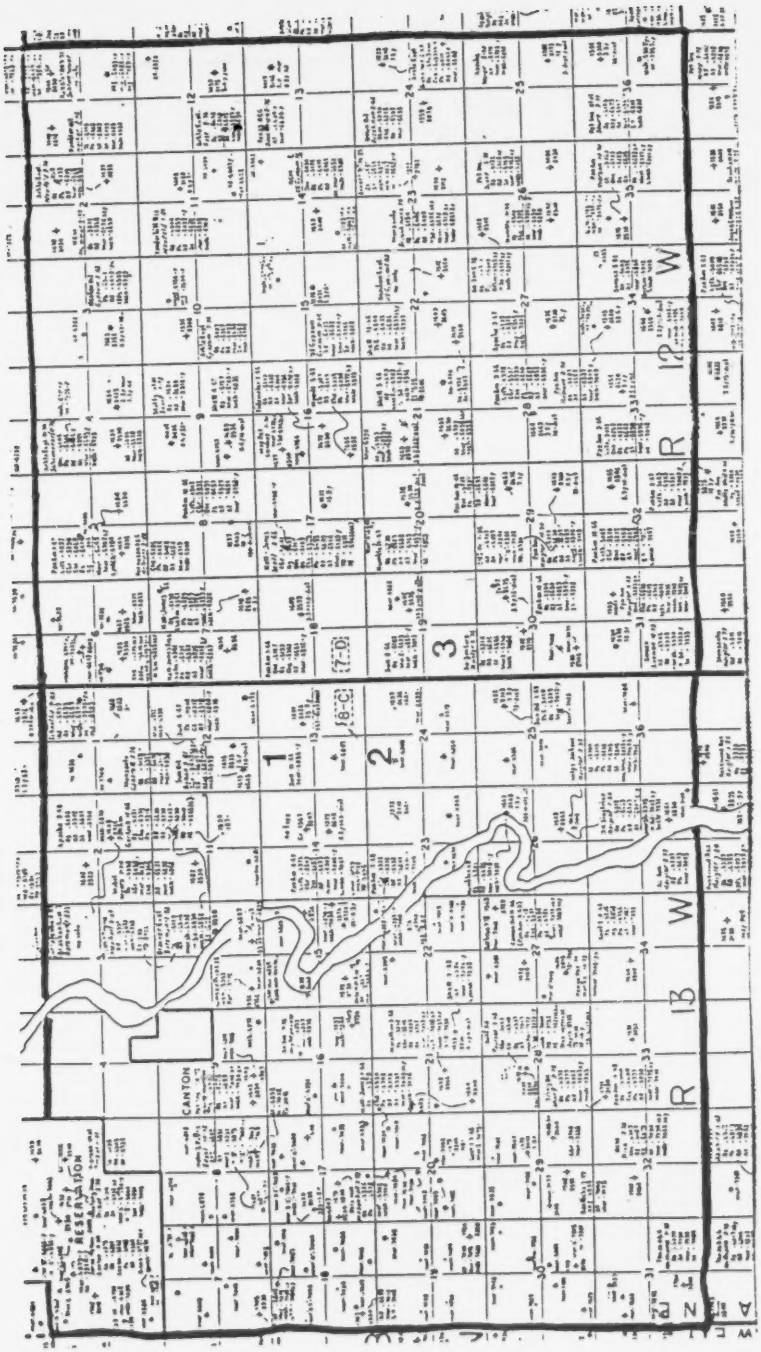

CANTON
R 13 W
R 12 W
T 20 N
T 19 N
1
2
3

ANADARKO AGENCY
C/O SUPERINTENDENT
P O BOX 309
ANADARKO, OK 73005

9001552

DATE RUN: 10/01/98 08:47:28:70 — STATEMENT OF OIL & GAS RECEIPTS & DISBURSEMENTS — ANADARKO AGENCY — PROGRAM: OG400 — PAGE 1

NAME AN HOUSTON DECKER
ADDRESS P.O. BOX 374
CITY/STATE/ZIP PRYOR OK 74361

ACCT# 806U022641

LEASE PR RG.	SALE CD	DUE DT MO/YR	DT RCVD TO MMS	CK BY MMS	TC	INT	QUANTITY	UNIT VALUE	RYLTY RT	RENT & ROYALTIES	ASSESSMENT	ALLOWANCE	NET AMOUNT	OWNER INTEREST	OWNER SHARE
PAYOR 11110 ARCHE CORP.															
61208	04	686	073188	063168	092888		42988.98	0.88	.2000	7654.38		2623.58-	5030.80	.142857	718.87
PAYOR 17850 COTTON PETROLEUM CORP.															
61208	04	1083	113083	080188	092188		.00	0.00	.1000	12582.85			12582.85	.142857	1811.81
61208	04	1183	123183	080188	092188		.00	0.00	.1000	3680.45			3680.45	.142857	525.78
61208	04	1283	013184	080188	092188		.00	0.00	.0027	803.13			803.13	.142857	114.73
61208	04	184	022884	080188	092188		.00	0.00	.1000	2204.65			2204.65	.142857	315.24
61208	04	284	023184	080188	092188		.00	0.00	.1000	672.76			672.76	.142857	96.11
61208	04	584	063084	080188	092188		19324.00	2.85	.1000	5696.51			5696.51	.142857	813.79
61208	04	784	083184	080188	092188		29417.00-	0.43-	.1000	1272.15			1272.15	.142857	181.88
61208	04	884	093084	080188	092188		72096.00	2.83	.1000	20415.42			20415.42	.142857	2916.44
61208	04	984	103184	080188	092188		.00	0.00	.1000	555.16			555.16	.142857	79.31
61208	04	1084	113084	080188	092188		.00	0.00	.1000	118.39			118.39	.142857	16.91
61208	04	1184	123184	080188	092188		.00	0.00	.1000	651.68			651.68	.142857	93.10
61208	04	1284	013185	080188	092188		.00	0.00	.1000	698.12			698.12	.142857	99.73
61208	04	185	022885	080188	092188		.00	0.00	.1000	1049.75			1049.75	.142857	149.96
61208	04	285	023185	080188	092188		.00	0.00	.1000	695.39			695.39	.142857	99.34
61208	04	385	043085	080188	092188		.00	0.00	.1000	834.21			834.21	.142857	119.19
61208	04	485	052185	080188	092188		.00	0.00	.1000	61.07			61.07	.142857	8.72
61208	04	585	063085	080188	092188		19324.00-	2.85	.1000	5565.15-			5565.15-	.142857	795.02-
61208	04	785	083185	080188	092188		.00	0.00	.1000	7616.95			7616.95	.142857	1088.14
61208	04	885	093085	080188	092188		72096.00-	1.89	.1010	13769.61-			13769.61-	.142857	1967.06-
61208	04	1085	113085	080188	092188		.00	0.00	.1912	263.15			263.15	.142857	37.59
61208	04	1185	123185	080188	092188		.00	0.00	.1000	211.42			211.42	.142857	30.20
61208	04	1285	013186	040188	092188		.00	0.00	.1000	220.00			220.00	.142857	31.43
61208		662	063062	080188	092188		.00	0.00	.0000	.00	41071.34		41071.34	.142857	5867.33
61208		863	053062	062188	092188		.00	0.00	.0000	.00	41071.34-		41071.34-	.142857	5867.33-
61208		1162	123182	061688	092888		.00	0.00	.0000	.00	313.82		313.82	.142857	44.83
61208		1262	013183	061688	092888		.00	0.00	.0000	.00	16.01		16.01	.142857	2.29
61208		263	023183	061688	092888		.00	0.00	.0000	.00	15.59		15.59	.142857	2.23
61208		363	043083	061688	092888		.00	0.00	.0000	.00	12.70		12.70	.142857	1.86
61208		463	053183	061688	092888		.00	0.00	.0000	.00	24.43		24.43	.142857	4.52
61208		1263	013184	061688	092888		.00	0.00	.0000	.00	56.32		56.32	.142857	8.05
61208		264	023184	061688	092888		.00	0.00	.0000	.00	55.44		55.44	.142857	7.92
61208		364	043084	061688	092888		.00	0.00	.0000	.00	65.30		65.30	.142857	9.90
61208		464	053184	061688	092888		.00	0.00	.0000	.00	80.88		80.88	.142857	8.67
61208		564	063084	061688	092888		.00	0.00	.0000	.00	585.49		585.49	.142857	87.52
*LEASE TOTALS							12171.98			48722.82	1000.72	2623.58-	47422.80		6774.71
PAYOR 48880 SANGUINE LTD.															
61434	04	686	073188	062188	092188		2448.00	1.04	.1250	316.70			316.70	.003536	1.12
61434	00	1086	113088	062288	092888		.00	0.00	.0000	403.99			403.99	.003536	1.42
PAYOR 78545 RALPH, F. HOWARE, JR.															
61434	04	786	083188	062188	092188		48.71	0.61	.0751	3.22			3.22	.003536	.01
*LEASE TOTALS							2496.71			726.02			726.02		2.57

PRODUCT CODES
04 UNPROCESSED (WET) GAS — 00 PENT

0001553

ANADARKO AGENCY
C/O SUPERINTENDENT
P O BOX 309
ANADARKO,OK 73005

DATE RUN: 10/01/88 09:47:28:70 — STATEMENT OF OIL & GAS RECEIPTS & DISBURSEMENTS — ANADARKO AGENCY — PROGRAM: OG400 — PAGE 2

NAME AN
ADDRESS HOUSTON DECKER
CITY/STATE/ZIP P.O. BOX 374 PRYOR OK 74362

ACCT# 806U022641 (CONTINUED)

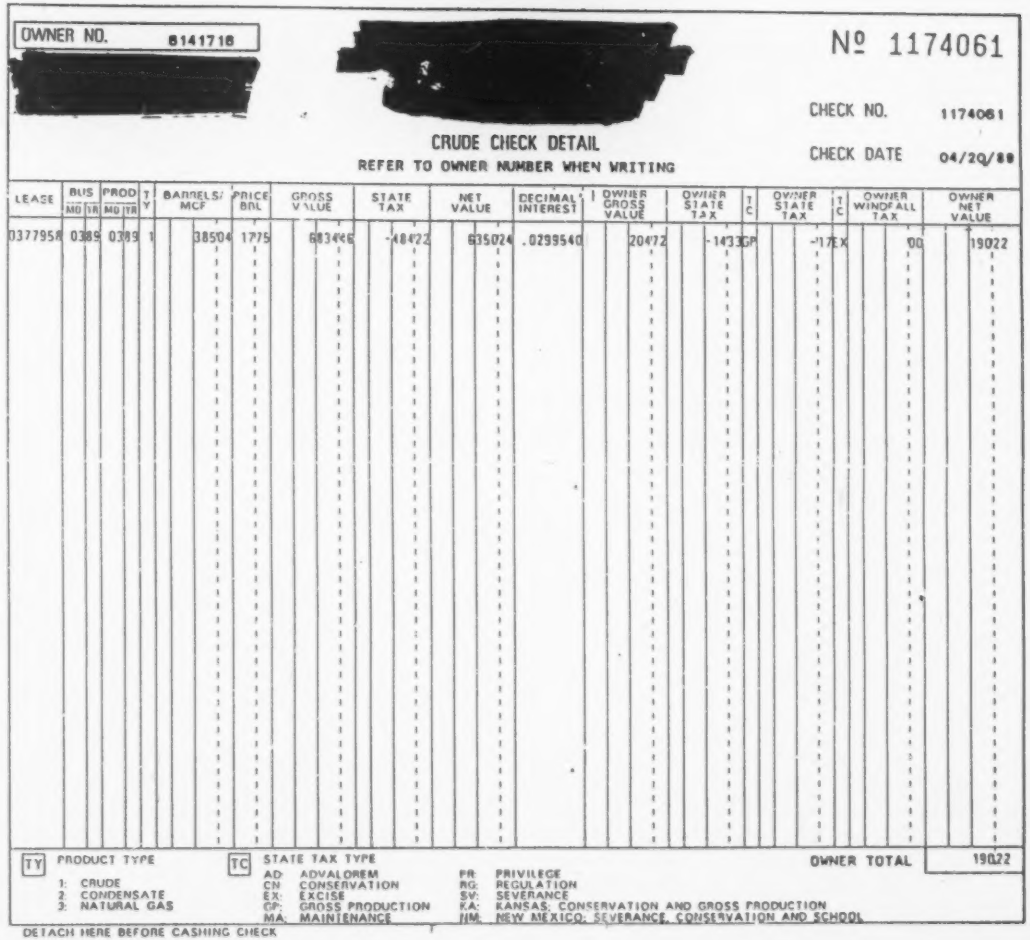
LEASE PR NO.	SALE DUE DT CD MO/YR	RCV DT TO MMS	CR. DT BY MMS	DR. DT TO IIM	QUANTITY	UNIT VALUE	ROYLTY RT	RENT & ROYALTIES	ASSESSMENT	ALLOWANCE	NET AMOUNT	OWNER INTEREST	OWNER SHARE
PAYOR 13435 BEREXCO, INC.													
61427 07	788	083186	083186	083186	172.85	1.11	.2000	38.43			38.43	.014510	.56
*LEASE TOTALS					172.85			38.43			38.43		.56
**OWNER TOTALS					15841.34			48480.08	1320.76	2623.99-	46187.25		6777.84

DISBURSEMENTS FROM IIM ACCOUNT FROM 9/01/88 TO 9/30/88

DATE	CHECK NO.	AMOUNT
9/22/88	0103431068	5869.04
9/29/88	0103433446	908.80
***CHECK TOTALS 2		$ 6777.84

95
99

PRODUCT CODES
07 GAS PLANT PRODUCTS



OWNER NO. 8141718

[redacted]

[redacted]

Nº 1174061

CHECK NO. 1174061

CHECK DATE 04/20/89

CRUDE CHECK DETAIL

REFER TO OWNER NUMBER WHEN WRITING

LEASE	BUS MO	BUS YR	PROD MO	PROD YR	TY	BARRELS/ MCF	PRICE BBL	GROSS VALUE	STATE TAX	NET VALUE	DECIMAL INTEREST	OWNER GROSS VALUE	OWNER STATE TAX	TC	OWNER STATE TAX	TC	OWNER WINDFALL TAX	OWNER NET VALUE
037795R	0389		0389		1	38504	1775	683466	-48422	635024	.0299540	20472	-1433	GP	-17	EX	00	19022

TY PRODUCT TYPE
1: CRUDE
2: CONDENSATE
3: NATURAL GAS

TC STATE TAX TYPE
AD: ADVALOREM
CN: CONSERVATION
EX: EXCISE
GP: GROSS PRODUCTION
MA: MAINTENANCE
PR: PRIVILEGE
RG: REGULATION
SV: SEVERANCE
KA: KANSAS; CONSERVATION AND GROSS PRODUCTION
NM: NEW MEXICO; SEVERANCE, CONSERVATION AND SCHOOL

OWNER TOTAL 19022

DETACH HERE BEFORE CASHING CHECK

OWNER NO. 080450

DATE 09-26-85

[redacted]

DETACH AND SAVE FOR TAX RECORDS. DUPLICATE INFORMATION CANNOT BE FURNISHED.
"R" IN NET VALUE COLUMN DENOTES REDUCTION OF CHECK AMOUNT

LEASE INTEREST

LINE	PROPERTY NUMBER	PROD CODE	DATE	GROSS VOLUME	UNIT PRICE	GROSS VALUE	PRODUCTION TAX	VALUE AFTER TAX
01	3400H8019000000	4	0685	138797	3.172	440321.22R	31196.76R	409124.52R
02	3400H8019000000	4	0685	96777	3.061	296311.38	20993.60	275317.78
03	3400H8019000000	4	0785	96260	2.875	276802.04	19611.47	257190.57
04	3400H8019000000	4	0885	72526	2.530	183527.39	13002.94	170524.45
05	3400H8019000000	1	0885	2771.25	27.250	75516.58	5350.35	70166.23
06								
07								
08								
09								
10								
11								
12								
13								
14								
15								
16								

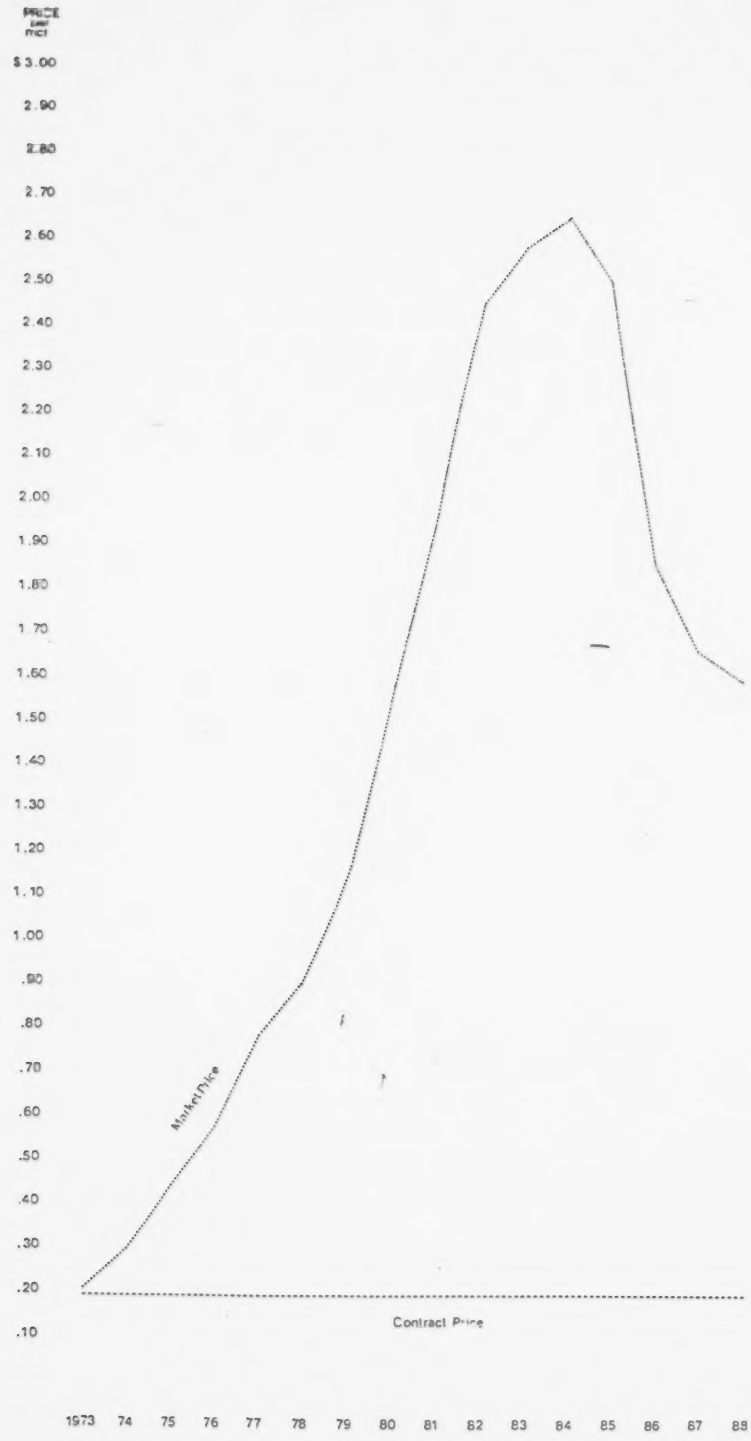
OWNER INTEREST

LINE	PROPERTY NUMBER	DECIMAL	TYPE	VALUE BEFORE TAX	VALUE AFTER TAX	WINDFALL PROFIT TAX AMOUNT	WINDFALL PROFIT TAX PCT	NET VALUE
01	3400H8019000000	.0001563	0	68.82R	63.94R			63.94R
02	3400H8019000000	.0001563	0	46.31	43.03			43.03
03	3400H8019000000	.0001563	0	43.26	40.19			40.19
04	3400H8019000000	.0001563	0	28.69	26.65			26.65
05	3400H8019000000	.0001563	0	11.80	10.96		225	10.96
06								
07								
08								
09								
10								
11								
12								
13								
14								
15								
16						[redacted] TOTAL AMOUNT		56.89

OIL TIER CODES 1 Free Market 3 Upper Tier 5 Lower Tier

PRODUCT CODES 1 Oil 2 Condensate 3 Casinghead Gas 4 Gas Well Gas 5 Plant Liquids 6 Other

N - A Lease Line No. corresponds to the same Owner Line No.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2.90
2.80
2.70
2.60
2.50
2.40
2.30
2.20
2.10
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1.90
1.80
1.70
1.60
1.50
1.40
1.30
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.90
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.70
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.40
.30
.20
.10
Market Price
Contract Price
1973 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88

RECOMMENDATIONS TO THE SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS REGARDING THE MANAGEMENT OF INDIAN OIL AND GAS ROYALTIES

Benjamin L. Binder, P.E.

I first reviewed the design of the Minerals Management Service (MMS) Production Accounting and Auditing (PAAS) and Auditing and Financial System (AFS) in 1982 when my firm, Digital Design Group, Inc., was selected to develop automated oil and gas lease management, royalty accounting, and production accounting systems for the State of Colorado. I have been following the development and implementation of MMS's systems since that time. For the past nine months one of my assignments has been consultant to Oklahoma Indian Legal Services and the Native American Rights Fund in the ongoing Kauley v. United States litigation.

The following written testimony will provide examples indicating that the MMS has failed to develop the powerful automated auditing systems recommended by the Commission on Fiscal Accountability of the Nation's Energy Resources (Linowes Commission) and mandated by Congress in the Federal Oil and Gas Royalty Management Act of 1982. The comprehensive oil and gas systems developed by the State of Colorado are described to illustrate what today's data processing dollar can buy if judiciously spent, and to indicate the diseconomy of scale experienced by MMS in attempting to develop a large unmanageable system that aims to serve the royalty accounting needs of the entire nation.

MMS AUTOMATED SYSTEMS - 1982 EXPECTATIONS

One of the Department of Interior's trust responsibilities to Indian allottees is to ensure that allottees receive all mineral royalties to which they are legally entitled. In 1981 and 1982 the Linowes Commission investigated serious allegations of massive irregularities in royalty payments due the Federal Government,

Indian tribes, and States. Many of the recommendations made by the Commission to correct longstanding problems were embodied in the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). The legislative history of FOGRMA states:

> "The Commission on Fiscal Accountability of the Nation's Energy Resources concurred with the findings of previous studies in its own 267 page report and detailed 60 specific recommendations for revamping the royalty management system."

The centerpiece of the recommended improvements was the new automated royalty management system that was to be developed in two phases. The Auditing and Financial System (AFS) - Phase 1, and the Production Accounting and Auditing System (PAAS) - Phase 2.

Excerpts from the Linowes Commission report state:

> "The plans for Phase One of the new system call for checks on validity--that is, the plausibility--of data that are entered into the system. For example, if an entry for an oil and gas royalty payment departs too far from royalties paid in the past, the computer will flag the exception for investigation. Another check on data validity will be a computer edit of payor's sales and royalty reports to assure that they have used the correct royalty rate."
>
> "Accounts in the new system should show reliably which payors have paid royalties and which still owe. The system will also flag delinquent accounts for investigation."

The requirements for the AFS and PAAS stated in the Linowes Commission report were excellent. The system recommended by the Linowes Commission would automatically detect delinquent reports, cross check operator production reports with royalty sale volumes, and verify reported royalty rates, deductions, and oil and gas unit prices. Since incorrect royalty rates, sales volumes, deductions, and unit prices have been shown to account for the majority of underpaid royalties, a system that would detect delinquent royalty reports and examine <u>all</u> reported royalties for suspiciously low

royalty rates, volumes, and unit prices would go a long way towards ensuring that Indian Allottees receive the royalty payments to which they are entitled. The recommendations made by the Linowes Commission were incorporated into the costly AFS and PAAS system design documents of 1981-1983.

The original design of the MMS Production Auditing and Accounting System and Auditing and Financial System were based upon the concept of 'Management by Exception'. Royalties that pass rigorous automated front-end edits are accepted, and royalties that fail to pass the edits are flagged as audit candidates and pursued by teams of auditors until the discrepancies are resolved.

Congress anticipated the new automated royalty management system would not only improve royalty collections but also result in cost savings associated with the use of automation and modern management by exception techniques. FOGRMA legislative history reads:

> "The Committee realizes that the need for audits is expected to change as the new royalty accounting system is implemented. Prior to the implementation of the new system, extensive audits will be crucial to royalty collection. Once the new system is in place, and audits have proven that the new system is working well, the level of auditing may be reduced.

MMS AUTOMATED SYSTEMS - 1989

It is interesting to compare the 1982 expectations of Congress, the Department of Interior, and Indian allottees who depend upon monthly oil and gas royalty payments for the basic necessities of life with the actual progress made by the Department of Interior over the past seven years. The AFS has not developed into the powerful auditing tool that Congress both mandated and paid for. In the words of one high ranking MMS employee, "It is not an auditing system, it is an accounting system. We are concerned with getting the money in and getting it out."

The Linowes Commission Report published in January, 1982 states:

> "That since the Production Accounting and Auditing System is so important to the proper functioning of the royalty management system, the Secretary take the necessary steps to assure that adequate financial and human resources are available through reprogramming or otherwise for prompt implementation after the design is completed in the Spring of 1982".
>
> "The momentum for correcting royalty management failures of 20 years' standing should not be lost. Attention at the Secretarial level will help to assure that the managers of the Federal royalty program adopt an effective, high quality, new system on schedule."

Furthermore, the Legislative history of FOGRMA states:

> "MMS is presently in the progress of implementing a computerized accounting system that will eventually provide the capability to perform the necessary fiscal and production accounting. Phase one of the system, the Auditing and Financial System (AFS), is targeted to come on stream by January 1983. Phase two, the Production, Auditing, and Accounting System (PAAS), which will provide the capability to cross check company sales reports with production reports, should be brought on stream no longer than 1984."

As of the date of this testimony in May of 1989, only a small fraction of the production from Indian Allottee leases is reported to either the PAAS or the revised 3160 system. Of the 940 Anadarko Area allotted leases, production volumes from only seven leases are being entered into MMS production accounting systems. One can only guess at the royalties the Minerals Management Service has failed to collect as the result of implementing an onshore production accounting system five years behind schedule.

The Linowes Commission Report states:

> "Most major audits conducted so far have shown undervaluation of gas produced from Federal and Indian leases to be the biggest cause of royalty underpayments."
>
> "A sophisticated data check planned for Phase One is the "Product Value Screen." The Geological Survey's Product Valuation Unit is preparing a computerized data base of current market values for oil and gas by geographical areas, taking into

> account characteristics of oil such as gravity, sulfur content, and impurities. The data base will be kept up to date. The plans call for prices and characteristics of products, as itemized in payors' sales reports to be checked against the product value data base, with the computer flagging any discrepancies."

As of the date of this testimony, MMS still has not implemented a system to verify the reasonableness of all reported oil and gas unit prices. While verifying the reasonableness of unit prices is one of the most basic and fundamental functions of any royalty management systems, the MMS has neither automated nor manual procedures to screen all unit prices and flag for audit those prices that are outside of an acceptable range.

Instead of utilizing an efficient automated system to screen all reported royalties and detect and resolve problems with royalties as they are remitted, the MMS strategy is to rely upon manual audits of payor companies. These audits will be performed on three and five year audit cycles. There are many obvious problems associated with performing lookback audits and attempting to collect royalty underpayments that occurred many years prior to the audit. In addition, the manual audits will examine only a very small percentage of all reported royalties and will not detect the vast majority of unit price errors.

MMS has turned the clock back to the 1970's when the USGS had no routine controls for checking the reasonableness of unit prices and had to rely on infrequent after-the-fact audits to verify company reports.

NO EXCUSE FOR DELAYS IN IMPLEMENTATION OF A SYSTEM TO PERFORM RIGOROUS FRONT-END EDITS OF ALL REPORTED ROYALTIES

In my opinion, based upon seven years of experience developing and implementing oil and gas lease management, royalty accounting, and production accounting systems for state governments there is no

excuse for the Department of Interior's delay in implementing the effective royalty management system recommended by the Linowes Commission and mandated by congress in the Federal Oil and Gas Royalty Management Act of 1982.

As a counterpoint to the Department of Interior MMS system which cost over $100,000,000 to develop and which fails to perform several fundamental and basic functions recommended in 1982, I will briefly describe the oil and gas information management system developed by the State of Colorado. This system was developed by the Department of Natural Resources to serve the needs of the State Board of Land Commissioners and the Oil and Gas Conservation Commission. The system is called the Colorado Oil and Gas Information Management System (COGIMS), and consists of the following seven subsystems:

State Board of Land Commissioners

- STATE LANDS INVENTORY
- LEASE MANAGEMENT
- ROYALTY ACCOUNTING

Oil and Gas Conservation Commission

- WELL PERMITTING
- PRODUCTION ACCOUNTING
- CONSERVATION LEVY
- SALTWATER DISPOSAL

State Lands Inventory

The State Lands Inventory database maintains information on all mineral and surface rights owned by the State of Colorado including: legal descriptions, acres, percent ownership, minerals owned, counties in which the rights are located, trust funds to which the rights belong, and certificates of purchase that encumber the lands. As in the other COGIMS subsystems, encoding of legal descriptions was standardized to accommodate future geographic and automated mapping applications. There are currently 9,460 parcels in the State Lands Inventory database covering four million acres of mineral rights and three million acres of surface rights.

In addition to standard reports that list State Lands Inventory data in many different formats and according to different selection criteria, the system also includes a program to automatically compare all 22,416 wells in the OGCC Well file with the 9,460 parcels in the State Lands Inventory and prepare a report of all wells located in sections in which the State has oil and gas royalty interests.

Oil and Gas Lease Management

Approximately 1.9 million acres of lands owned by the State of Colorado are currently leased for oil and gas exploration and development. These 1.9 million acres are covered by 3,360 separate lease agreements. Revenues from oil and gas leases include bonus payments, annual rentals, royalties, shut-in royalties, late fees, and interest payments.

The Oil and Gas Lease Management subsystem maintains a database of information about each State oil and gas lease. This information is used in processing rental payments, bonuses, interest charges, and late fees, and to prepare reports generated by the Lease Management subsystem.

Users can rapidly display all data on a given lease, all leases in a specified location or all leases for a specified lessee. The user can also print reports of either all leases or leases that satisfy specified selection criteria. Additional hardcopy reports include the Lease Cross-index Report; Extension Candidate Report; Termination Candidate Report; Alert Letters and Report; and the Unearned Rentals Report which apportions each rental payment into an earned amount and a remaining liability for purposes of accrual accounting.

Royalty Accounting

Of the 3,360 active State oil and gas leases 650 have been successfully developed and contain producing wells. The Royalty Accounting Subsystem was developed to assist the State Board of Land Commissioners in ensuring that:

- The State receives oil and gas royalties on all production to which it is legally entitled;
- The royalty rates, unit prices, and other factors used in calculating royalties are in conformance with the provisions of the oil and gas leases;
- All interest charges and penalties for late payments are properly invoiced and collected;
- All rentals, royalties, and related payments are accurately accounted for, posted to the proper accounts and deposited in a timely manner.

Each month, the SLB receives a royalty payment for each product sold from each division order lease in which the State has a mineral interest. New oil and gas royalty report forms were designed to be completed by the royalty payors and accompany all remittances. Interactive royalty data entry programs:

- Prompt the user for all input data and perform extensive interactive on-line edit checks for all detectable errors.
- Store information reported on oil and gas royalty remittance documents in the royalty report database.
- Determine the proper Trust Fund and General Ledger Account numbers and write a record to the cash receipts journal for each payment.
- Use the Month and Year of Production, Date Received, and Payment Amount to determine if late fees and interest charges are due. If so, calculate the penalties and write appropriate records to the Accounts Receivable data file. (Separate programs exist for invoicing and generating aged receivable reports for items in the accounts receivable file.)

Once royalty payments for a month have been entered into the system, the following programs are run to detect delinquent payments and payments that are suspiciously low and therefore candidates for audits. These programs take advantage of COGIMS' ability to access and automatically cross-check information that is entered and maintained by separate agencies. In addition to generating reports, several programs automatically prepare letters addressed to the responsible parties.

- o List of reporting errors and Letters to Reporters
- o Aged Delinquent Report and Letters
- o SLB Royalty Volumes vs OGCC Production Volumes Variance Report
- o SLB Sales Proceeds vs Conservation Levy Proceeds Variance Report
- o SLB Royalty Payments vs Conservation Levy Exemptions Variance Report
- o SLB Royalty Unit Prices vs Field Average Unit Price Variance Report
- o Oil Price Bulletin Variance Report
- o Moving Average Variance Report

Well Permitting

The Well Permitting subsystem maintains a database of information on all active oil and gas wells in the State of Colorado including wells drilled on State, Federal, Indian, and private lands. The system stores information reported to the OGCC in the Application for Permit to Drill, Well Completion Report and Log, Sundry Notices, and the Producer's Certificate of Clearance and Authorization to Transport Oil or Gas From a Well. The well database includes up-to-date information on each well's API (American Petroleum Institute) number, location, county, oil field, operator, driller, permitted formation, lease, ownership, depth, producing formations,

well logs, casing, liner, tubing, and production rates, and approximately 50 additional data elements.

The Well Permitting subsystem allows the user to display all data for a specific well by entering the well's API number, or to rapidly list all wells for a specified section, township, operator, or lease.

Hardcopy reports include a list of all or selected wells; a list of expired permits and delinquent reports; a drilling summary that tabulates drilling activity by county, operator, and oil field; and an operator verification report that lists all leases for a specified operator together with all wells on each lease.

Production Accounting

The OGCC maintains records on the monthly oil and gas production from each producing lease in the State including production from State, Federal, Indian, and private lands. Approximately 9,800 production reports are received each month. In addition to leases that are currently producing, the system also maintains historical cumulative production data on wells that have been plugged and abandoned.

Monthly production data processed and stored by the system includes:

- Beginning of Month Inventory
- Barrels of Oil Produced
- Barrels of Oil Sold
- Adjustments
- End of Month Inventory
- Oil Gravity
- Oil Transporter
- Gas Produced

- Gas Flared
- Gas Sold
- Gas BTU
- Barrels of Water Produced
- Water Disposal Facility

To maintain integrity of the data stored in the database, programs extensively edit all entries. The user can view selected data for a lease for an entire 12 month period or zoom in on the detailed data for a particular month. Delinquent production reports are automatically detected and the Delinquent Report program generates letters to operators listing production reports that have not been received. Reports that have been received but contain reporting errors are also listed in these letters.

Using data stored in the Monthly Production data file, the system automatically produces monthly and annual production reports sorted by county, field, formation, operator, and lease. These reports list monthly and cumulative production and sales volumes with subtotals at the reservoir, field, and county levels. Commencing in January of 1985, all operator monthly reports of oil and gas production and sales have been entered into the system. The system currently contains 467,300 monthly reports in the on-line production database.

Conservation Levy

Conservation levy payments are remitted quarterly for each producing oil and gas lease. The Conservation Levy subsystem was developed to ensure that conservation levy payments were remitted for all marketed production not otherwise exempt from the levy. The Conservation Levy subsystem also creates a database of sales proceeds and unit prices used to generate unit price statistics to assist in audits of royalties and State severance taxes.

In addition to reports that summarize conservation levy collections, the Conservation Levy subsystem includes a set of variance reports that compare conservation levy payments with lease and production data and list delinquent and underreported conservation levy payments.

Water Disposal

Oil and gas operations often result in the production of significant quantities of water along with the oil and gas. The water is often contaminated with salt and other impurities and must be disposed of by approved methods. There are currently 5,000 approved evaporation pits and 780 water injection wells in Colorado.

The Water Disposal Subsystem assists the Oil and Gas Conservation Commission in regulating the disposal and reinjection of water produced in association with oil and gas operations. Information on permits, injection wells, and retaining pits may be rapidly accessed by facility number, operator, field, or location. One set of programs assists OGCC staff in completing EPA Underground Injection Control Federal Reporting System forms. These programs generate statistics on the permitting and inspection of all underground injection wells in the State.

The Enhanced Recovery and Disposal Well Injection Volume Report lists and summarizes injected volumes. Another report lists all monthly injection reports that have not been remitted and are delinquent. The Onsite, Central, and Commercial Pit Disposal Volume Reports use information collected by the Production Accounting subsystem to generate statistics on pit disposal volumes. Another report compares the volumes disposed of at each pit with the size and evaporation rates of the permitted pits. This report lists all leases that show a discrepancy between the volume of water that must be disposed of and the capacity of the approved pits.

In 1986, an independent team of data processing experts from the Urban and Regional Information Systems Association based in Washington, D.C. reviewed Colorado's Oil and Gas Information Management System and selected the system for one of six Exemplary Systems in Government Awards granted that year. In contrast with the $100 million plus AFS and PAAS systems, total appropriations for the Colorado system including both hardware and software amounted to $542,906. All seven subsystems of the Colorado Oil and Gas Information System were designed, developed, and implemented within a three year period, by a team of three systems analysts and programmers.

RIGOROUS FRONT-END AUDITS OF ALL ROYALTY PAYMENTS ARE MANDATORY

What level of effort is expected of the Minerals Management Service in the collection of Indian mineral royalties? Is the MMS stated policy of accepting royalty data subject to possible future audit sufficient, or does the trust responsibility of the US Government to Indian tribes and allottees mandate a more stringent royalty compliance program?

Section 2(a)(4) of the Federal Oil and Gas Royalty Royalty Management Act of 1982 states:

> "The Secretary should aggressively carry out his trust responsibility in the administration of Indian oil and gas."

In Seminole Nation v. United States heard before the United States Supreme Court in 1942, Justice Murphy wrote:

> "Under a humane and self imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, the United States has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians should therefore be judged by the most exacting fiduciary standards."

MMS's current audit strategy is heavily dependent upon lookback audits of royalty payors. In performing payor audits, auditors do not inspect all transactions of all leases in detail, instead, they only examine small samples of leases and report months to determine compliance with applicable laws, rules and regulations governing the computation of Federal and Indian Royalties. Such an approach will uncover systematic errors and failures of payor royalty accounting practices, but will not detect random errors and blunders made in calculating and paying and Indian royalties. Furthermore, audits are performed many years after royalty payments have been made. During the years between the time royalties were paid and audits are performed leases are assigned, oil and gas purchasers change, companies responsible for paying royalties merge with other companies, company assets are transferred, employees change, companies go out of business, and data and records become lost and destroyed.

To 'aggressively' administer Indian oil and gas mineral rights, it is not sufficient to audit payors once every three or five years. Reporting errors and royalty underpayments are more effectively resolved at the time they are made. Additional reasons for implementing a policy to detect royalty errors at the time they are made include making it clear to royalty payors that someone is 'watching the store', and to improve, via timely feedback, the quality and accuracy of reports remitted to the MMS.

In my opinion, to fulfill the trust responsibility of the United States for the administration of Indian oil and gas resources and to satisfy the mandates of FOGRMA, the Federal royalty accounting system must also examine all royalty payments and not merely a small representative sample. As recommended in the Linowes Commission report and demonstrated by state systems, much the work of verifying reported royalties can be automated.

MMS MUST PERFORM EDITS ON ALL 2014'S AND TRACK AND RESOLVE ALL ERRORS AND VARIANCES

Reporting errors are not uncommon. An April, 1988 Memorandum Audit Report No. E-LM-MMS-07-87C 88-62 prepared by the Office of the Inspector General (OIG) of the Department of Interior states,

> "In fiscal Year 1986, payors submitted reports that contained about 900,000 errors that were entered into the accounting system. These errors were not corrected because they did not prevent disbursement of the royalties to the lessor".

This corresponds to approximately 35 errors per year for each producing lease. The MMS Report of Sales and Royalty Remittance (2014) and Monthly Report of Operations (3160) require reporters to enter very basic data concerning oil and gas production, sales, and royalties. If a lease operator or royalty payor persists in making large numbers of errors when completing these forms, one might question their ability to properly operate the lease or accurately account for and disburse royalties.

If payors and lease operators did not make any reporting errors, automatic edit checks and comparisons between operator sales volumes and payor sales volumes would not be needed. The higher the number of reporting errors, the greater the need for front-end edits. The OIG report, on the other hand, argues that the greater the number of errors, the greater the costs of correcting the errors, and the more reason for not implementing a policy to resolve those errors. MMS's current operating policy is to not review and resolve those royalty reporting errors that the automated system detects, but to accept the incorrect data subject to possible future audits. Inasmuch as only a very small percentage of leases and report months are ever audited, the vast majority of errors go unresolved.

Automated front-end edits must check the reasonableness of all factors used in computing oil and gas royalties. These factors include:

- Royalty rate as stated in the Indian lease;
- Percent participation of the Indian lease in the unitization or communitization agreement in which the lease is participating;
- Volume, quality, and unit price of oil and condensate produced and stored (according to the terms of the lease) or sold (according to practice);
- Volume, BTU value, and unit price of gas sold;
- Volume and unit price of natural gas liquids sold;
- Transportation charges;
- Gas processing and conditioning charges;
- Gross production, severance, and conservation taxes.

All royalty payments must be examined at the time they are received and, at a minimum, the following checks performed. Royalty payments that do not meet the automated edit criteria must be flagged and pursued by a combination of automated letters to royalty payors and work by trained oil and gas auditors until they are resolved.

DELINQUENT ROYALTY REPORT

Cross-check reported royalties with a database of all revenue sources containing Indian mineral interests and list all properties for which royalties have not been received.

VOLUME VARIANCE REPORTS

Compare oil, gas, and other product volumes reported by royalty payors (2014's) with volumes reported by lease operators and report any significant variances;

UNIT PRICE VARIANCE REPORTS

Compare oil unit prices with local market prices based upon posted purchaser price bulletins and report any unit prices that are significantly lower than market prices;

Compare gas unit prices with a database of average monthly field prices and report any unit prices that are significantly lower than market prices. For selling arrangements for which gas is expected to be valued at prices significantly different from market price, compare reported unit prices with a range of acceptable prices for each arrangement;

TRANSPORTATION, CONDITIONING, AND OTHER DEDUCTIONS

Examine deductions for transportation, conditioning and other charges, and report any deductions that have not been previously approved or are unreasonable based upon area conditions;

NET MINERAL INTEREST VARIANCE REPORT

Compare the royalty rate used by the royalty payor in computing the royalty due with the royalty rate stated in the lease. If the lease participates in a unitized or communitized area, verify the percent participation used in computing the Indian royalty;

In Oklahoma, ensure that all 'excess' royalties (royalties in excess of 1/8, per Blanchard decision) are being remitted;

SEVERANCE, GROSS PRODUCTION, AND CONSERVATION TAXES

In areas in which Indian leases are exempt from severance, gross production, and conservation taxes, verify that these taxes were not deducted and list all royalty reports containing unlawful deductions;

EDIT COMPUTATIONS

For each monthly royalty, check the computations used in deriving the royalty and report all computational errors;

LATE INTEREST CHARGES

For tardy royalty payments, verify that proper late interest charges were remitted. Based upon production month, date royalty payment was received, royalty amount, and late charges paid, automatically invoice for unpaid late interest charges;

ADJUSTED REPORTS

2014's are frequently received that adjust previously submitted royalty reports. It is not sufficient to examine the adjustment apart from the previously submitted reports. When adjustments are received for a lease for a prior month, all edits and variance reports must be repeated on the totals resulting from the adjustments.

When Explanation-of-Payments are prepared, the entire history of transactions for the adjusted month must be displayed to the lessor. It is meaningless to list the adjustment without also showing the amounts being adjusted and the results of the adjustments.

If MMS cannot, via the use of well designed reporting forms, training, and penalties, reduce the volume of reporting errors to the level that their staffing is adequate to pursue and resolve errors on <u>all</u> leases, then it must, due to the strict fiduciary requirements of the trust responsibility to tribes and allottees, implement a policy of tracking and resolving errors and variances on <u>all Indian</u> leases.